Judicial Inquiry into the Behaviour of Provincial Judge Lloyd Henriksen

The Honourable
Mr. Justice Lloyd Houlden
Commissioner

1985

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Order in Council

O.C. 2297/84

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that

WHEREAS pursuant to the provisions of sub-section 8 (1) of the Provincial Courts Act, R.S.O. 1980, c. 398, the Judicial Council for Provincial Judges proceeded to investigate complaints concerning His Honour Judge Lloyd Henriksen, a Judge of the Provincial Court (Criminal Division); and

WHEREAS the said Judicial Council as a result of its investigation recommended to the Lieutenant Governor in Council pursuant to sub-section 8 (3) of the Provincial Courts Act, R.S.O. 1980, c. 398, that an inquiry be held pursuant to section 4 of the Provincial Courts Act, R.S.O. 1980, c. 398, into the following complaints,

(a) That His Honour Judge Lloyd Henriksen, in and after June of 1980, had a personal and public association with Alexander Radlin, an individual who he knew or ought to have known, stood charged with inter alia, the offence of possession of stolen property, contrary to the Criminal Code;

(b) That His Honour Judge Lloyd Henriksen did, on or about the 15th day of April, 1980, become involved in a disturbance in a public place, namely the parking lot of the Royale Tavern in Windsor, Ontario, and insist to the police upon his ability to drive his automobile, despite his obvious state of intoxication; and

(c) That His Honour Judge Lloyd Henriksen did, on or about the 2nd day of October, 1980, in the presence of a group of police officers, judges, Crown attorneys, defence counsel and other members of the public, at the Majestic Tavern in Windsor, Ontario, make disparaging and intemperate remarks concerning the Ontario Provincial Police and the manner in which that force was conducting a criminal investigation in the Windsor area;

NOW THEREFORE,

(i) pursuant to the provisions of sub-section 4 (2) of the Provincial Courts Act, R.S.O. 1980, c. 398, the Honourable Lloyd William Houlden, one of Her Majesty's Justices of the Supreme Court of Ontario, be appointed to make an inquiry, and report thereon to the Lieutenant Governor in Council, into the circumstances respecting the allegations contained in the three complaints, described above, for the purpose described in sub-section 4 (1);

(ii) all government ministries, agencies, boards and commissions assist the Honourable Mr. Justice Lloyd William Houlden to the fullest extent in order that His Lordship may carry out his duties and functions; and

(iii) His Lordship have authority to engage such counsel, investigators and other staff as His Lordship deems proper at rates of remuneration and reimbursement to be approved by the Management Board of Cabinet.

Recommended "R. McMurtry"
Attorney General

Concurred "Robert Welch"
Chairman

Approved and Ordered August 27, 1984

"John B. Aird"
Lieutenant Governor

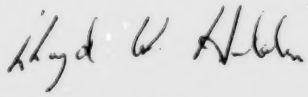
The Supreme Court of Ontario
The Honourable Mr. Justice Houlden

Osgoode Hall
Toronto, Ontario M5H 2N5

TO HIS HONOUR THE LIEUTENANT
GOVERNOR OF THE PROVINCE OF ONTARIO

May It Please Your Honour:

Pursuant to my appointment by Order in Council No. O.C. 2297/84 to make an inquiry and report to the Lieutenant Governor in Council into the circumstances respecting the allegations contained in three complaints specified in the Order in Council with respect to His Honour Judge Lloyd Henriksen, a Judge of the Provincial Court (Criminal Division), and to report whether he is disabled from the due execution of his office by reason of his conduct, I hereby submit my Report.



February, 1985.

Commissioner

Table of Contents

	Page
Order in Council, O.C. 2297/84, 27 August 1984	ii
Letter of Transmittal	iv
Report:	
Introduction	1
The Judge's Background	2
Formalities, Application for Standing and Other Matters	4
The Personal and Public Association With Alexander Radlin	6
The Royale Tavern Incident	32
The Majestic Tavern Incident	42
Conclusions on the Three Complaints	49
Recommendations	65
Appendix A: Staff of Commission and Appearances	66
Appendix B: Hearings	67
Appendix C: Witnesses	68
Appendix D: List of Exhibits	69

INTRODUCTION

At the time of the creation of this Commission, the appointment and tenure of a provincial judge were governed by the Provincial Courts Act, R.S.O. 1980, c. 398. On January 1, 1985, the Provincial Courts Act was repealed and replaced by the Courts of Justice Act, S.O. 1984, c. 11. Part IV of the new Act deals with provincial judges.

A complaint respecting the conduct of a provincial judge is made to the Judicial Council for Provincial Judges. When the Judicial Council receives a complaint, it shall take such action to investigate the complaint as it considers advisable.

Complaints were received by the Judicial Council respecting Judge Henriksen's conduct. After investigating the complaints, in the manner required by statute, the Judicial Council recommended an inquiry be held pursuant to s. 4 of the Provincial Courts Act (now s. 60 of the Courts of Justice Act).

When the Judicial Council recommends the holding of an inquiry, the Lieutenant Governor in Council may appoint a judge of the Supreme Court to conduct it. By Order in Council 2297/84, the Lieutenant Governor in Council appointed me to conduct an inquiry into the circumstances respecting the allegations contained in three complaints specified in the Order in Council.

The purpose of the inquiry is to inquire into the question whether a provincial judge should be removed from office (s. 60(1) of the Courts of Justice Act). The report of the inquiry may recommend (a) that the judge be removed from office, and (b) that the judge be compensated for all or part of the costs incurred by him relating to the inquiry (s. 60(3) of the Courts of Justice Act).

Section 56 of the Courts of Justice Act provides that a judge may be removed from office before attaining retirement age only if a complaint regarding the judge has been made to the Judicial Council, and the removal is recommended by an inquiry under s. 60 on the ground that the judge has become incapacitated or disabled from the due execution of his office by reason, inter alia, of conduct that is "incompatible with the execution of his office." When an inquiry under s. 60 recommends removal, an order removing a judge may be made by the Lieutenant Governor on the address of the Legislative Assembly (s. 56(2)).

THE JUDGE'S BACKGROUND

Lloyd Alrik Henriksen was born August 19, 1931, at Cornwall, Ontario. He attended school in the Cornwall area and graduated from Cornwall Collegiate. He obtained his B.A. from Sir George Williams College, Montreal. He attended Osgoode Hall Law School and graduated in 1957. In the same year, he was called to the Bar and commenced the practice of law as a sole practitioner in Cornwall. After approximately one year he moved to London, Ontario and practised law with Samuel Weir, Q.C. In 1960, he moved to Windsor and joined the law firm of Gignac, Sutts.

With the Gignac, Sutts firm, he was primarily engaged in matters involving real estate, but he also handled some criminal cases. In his latter years with the firm, the emphasis was still on real estate, but his criminal law practice had increased in volume. In 1964-65, he became a part-time Crown Attorney for the City of Windsor.

On March 1, 1968, he was appointed a Provincial Judge of the Provincial Court (Criminal Division). Although nothing turns on it, the Order in Council (O.C. 4665/68) appointing Judge Henriksen is dated November 21, 1968, and the oath of office and oath of allegiance were sworn by him on November 29, 1968. Order in Council 4665/68 states that Judge Henriksen's appointment is effective December 2, 1968. Judge Henriksen explained the discrepancy in the dates in this way: He said that his appointment was actually effective March 1, 1968, and shortly after that date, he was informally sworn in by Provincial Judge Stewart, the senior judge of the County. He went to Toronto for a two-week orientation period and, on his return, commenced to sit full time as a judge in Windsor. His formal swearing-in, to which the public was invited, did not take place until November 29.

As a judge, he sat at Windsor and Leamington and various other places in the County of Essex. He also sat regularly at Chatham in the County of Kent.

Judge Henriksen was divorced in 1975; he remarried the same year. He has an adopted son, a child of his second wife from her first marriage.

On April 29, 1981, Judge Henriksen was charged with two counts of attempting to obstruct justice. On the same day, he was given leave of absence from his duties, and he has not sat as a judge since that time. He has, however, received his full salary during this period.

Considerable evidence was given before me with respect to Judge Henriksen's good character and his judicial competence. Some twenty-nine letters from lawyers, assistant Crown Attorneys, police officers and prominent citizens dealing with these matters were filed as exhibits, and, in addition, two provincial judges and seven lawyers gave oral testimony. Judge Stewart, the senior judge of the Counties of Essex and Kent, the counties in which Judge Henriksen presided as a judge, testified that Judge Henriksen was one of the better provincial judges in the Province of Ontario and enjoyed the reputation of being one of the stronger members of the Provincial Court Bench.

FORMALITIES, APPLICATION FOR STANDING AND OTHER MATTERS

Judge Henriksen was given notice in writing of Order in Council 2297/84 and my appointment as Commissioner. He was also notified in writing of the date on which the inquiry would commence.

Notice of the holding of the inquiry was published in the Windsor Star on October 16, and December 17, 1984. In the notice of October 16, details were given of the complaints against Judge Henriksen, and persons who had information on these matters were invited to communicate with counsel for the Commission. In the notice of December 17, details were given of the location and time of the commencement of the public hearing for the taking of evidence.

At the opening of the inquiry, I read the following statement:

> This Commission of Inquiry has been directed by Order in Council of the Lieutenant Governor of Ontario by and with the advice and concurrence of the Executive Council of the Province of Ontario.
>
> The purpose of the inquiry is to inquire into complaints concerning his Honour Judge Lloyd Henriksen, a Judge of the Provincial Court, Criminal Division, of the Province of Ontario.
>
> The clerk of the Commission is Michael Penny. Counsel for the Commission J.W. Brown, Q.C. and Mrs. Kathryn N. Feldman.
>
> The Commission has been informed by his Honour Judge Henriksen that he is represented by Edward Greenspan, Q,C. and Marc Rosenberg.
>
> Witnesses who are required to testify in this inquiry may be represented by their own lawyers while they are giving evidence. The questioning of witnesses on matters relevant to the inquiry will be conducted by Commission Counsel.
>
> As Counsel to Judge Henriksen, Mr. Greenspan and Mr. Rosenberg will be entitled to cross-examine all witnesses and to lead such evidence as they see fit.

The Commission will sit from 9:30 a.m. until 1:00 p.m. and from 2:00 p.m. until 5:00 p.m. each day subject to any exigencies which may arise.

Harry Black, Q.C., counsel for the Ontario Provincial Police, pursuant to s. 5(1) of the Public Inquiries Act, requested that I should recognize that the Ontario Provincial Police had a substantial and direct interest with respect to the third ground of complaint in the Order in Council. After hearing his submissions, I ruled that he would be permitted to ask questions, if he saw fit, of any witnesses giving testimony on the third complaint, but I did not grant him standing. I also permitted him to make submissions at the conclusion of the taking of evidence.

On the first day of the hearing, I refused to permit television coverage of the inquiry. On the second day, counsel for the Canadian Broadcasting Corporation and for the Windsor Star appeared before me and made submissions on this subject. Counsel for Judge Henriksen would not consent to the proceedings being televised, and I was concerned that if Judge Henriksen were permitted to sit again as a provincial judge, television coverage might affect public confidence in the administration of justice. I, therefore, ruled that there would be no television coverage of the inquiry; however, I permitted the television and newspaper photographers to come in and take photographs of the inquiry room and the persons involved in the inquiry at a time when the Commission was not in session.

All hearings of the inquiry were open to the public, except for the exclusion of witnesses when requested by counsel. The press were permitted to be present and to report fully all the proceedings.

THE PERSONAL AND PUBLIC ASSOCIATION WITH ALEXANDER RADLIN

The first complaint against Judge Henriksen is:

(a) That His Honour Judge Lloyd Henriksen, in and after June of 1980, had a personal and public association with Alexander Radlin, an individual who he knew or ought to have known, stood charged with inter alia, the offence of possession of stolen property, contrary to the Criminal Code;.

Alexander Radlin is a resident of the City of Windsor, he was born December 6, 1922. He has the following criminal record:

Date	Place	Crime	Disposition
June 15, 1942	Chatham	Break and enter with Intent	Suspended sentence and 2 yrs. probation
Aug. 31, 1942	Windsor	Disorderly conduct	$16.50 or 30 days
Aug. 16, 1943	"	1) Breach oil control regulations 2) Receive stolen goods	$53 or 2 months 2 mos. concurrent
Sept. 14, 1944	"	Exhibit racing information	$200 and costs or 30 days
Apr. 25, 1946	"	Frequent a betting house	$13 or 10 days
July 3, 1946	"	Break & enter	2 yrs. less 1 day determinate and 2 yrs. less 1 day indeterminate
Nov. 21, 1946	"	Break, enter and theft	18 mos. determinate & 2 yrs. less 1 day indeterminate
Apr. 25, 1950	"	Disorderly conduct	$15 & costs or 10 days

Date	Place	Crime	Disposition
May 10, 1950	"	Obstruct P.D.	10 days
Mar. 9, 1954	"	Liquor o/t residence	$10 & costs or 5 days
Aug. 29, 1973	"	Breach of Income Tax Act	$200 or 7 days
May 25, 1981	"	1) Procuring	1 day jail, $250 fine or 10 days consecutive
May 25, 1981		2) Procuring	$250 fine or 10 days & 1 day jail concurrent
		3) Procuring (5 counts)	$250 fine or 10 days on each count & 1 day in jail concurrent
Nov. 26, 1982	"	Possession of stolen property	1 day in jail, $2500 fine or 6 mos.

Judge Henriksen's hobbies are hunting and fishing. It was through these activities that he met Alexander Radlin.

In 1964 or 1965, Judge Henriksen was invited to a moose dinner at Radlin's residence by Harold Bick, a Windsor lawyer. Bick subsequently became a judge of the Provincial Court (Family Division). He is now deceased. It was Judge Henriksen's custom to go fishing on the Victoria Day holiday with a group of friends at a place about 20 miles north of Thessalon. After the moose dinner, Radlin attended on most of the Victoria Day fishing trips.

When Judge Henriksen met Radlin, he did not know that Radlin had a criminal record, nor did he know how Radlin earned his living. He was subsequently informed that Radlin had been involved in mining claims. Before Judge Henriksen's appointment to the Bench, he was consulted by Radlin in connection with obtaining a licence for selling clothes and about the rental of apartments in Radlin's home.

In 1968 or 1969, on the Victoria Day weekend, the usual fishing party took place at Thessalon. On that occasion, the group comprised, among others, Tom Calwell and Peter Spurgeon, constables in the Ontario Provincial Police, and Bob Meyers, the outdoor editor of the Windsor Star. Meyers took a picture of the group and published it in the Star together with a story about the fishing.

As a result of the publication of the picture, the two police constables encountered some difficulty with their superior officers. They told Judge Henriksen that they had been reprimanded for the fact that their picture had appeared in the paper with Alexander Radlin and that, as a result, they were being transferred. Spurgeon was transferred to South Porcupine and Calwell to Lucan. Rather than be transferred, the two officers resigned from the O.P.P. At this time, Judge Henriksen found out that Radlin had a criminal record and that Spurgeon and Calwell's superior officers did not like the two constables posing in a photograph with a person who had such a record.

In cross-examination, Commission Counsel asked Judge Henriksen the following question arising out of what had happened to Constables Spurgeon and Calwell:

> Q. The question I am asking is whether you at that time considered that you were in any different position from the Provincial Police in relation to continued association with Mr. Radlin?

and Judge Henriksen gave the following answer:

> A. They may not have wanted him to associate - I don't know what the basic reasons were. I thought it was because of the picture and because he had a record. But as far as I was concerned I didn't think I had the same position at all as they had, as police officers.

Shortly after the reprimanding of the two officers, someone mailed Judge Henriksen an unsigned letter containing a copy of Radlin's criminal record. As criminal records are not freely available to members of the public, I think it is a fair inference that some member of the Windsor police force or the O.P.P. sent Judge Henriksen the criminal record as a warning that the Judge should be careful in his dealings with Alexander Radlin.

Although he was rather vague about it, it appears that Judge Henriksen had some kind of discussion with Radlin about his criminal record. In examination-in-chief, he gave the following evidence on this point:

> Q. Did you speak to Mr. Radlin about his criminal record once you had possession of it?
>
> A. I don't recall speaking to him about it other than the fact that I was asked - I was asking him about the fact that he hadn't mentioned about the

break and enter thing. I don't recall too much about that. I don't think I spoke to him very much on that.

When Judge Henriksen saw the record, the last Criminal Code offence was the conviction for obstructing a police officer in 1950. Judge Henriksen was asked what he thought of the record, and he replied that the last serious offence was a conviction for break, enter and theft in 1946. The conviction for obstruction in 1950 was, in his opinion, serious, but it was not an offence that involved moral turpitude.

Judge Henriksen was asked by Mr. Rosenberg if, after seeing the criminal record and discussing it with Radlin, he considered breaking off his friendship with Radlin. He gave the following answer to this question:

> A. No, I did not.
>
> Q. Why was that?
>
> A. Well, as I say, the last serious matter that I saw was a matter - the matter of 1946, and this, when I saw this record, was about 1969 or 1970 probably, and I thought obviously when he was convicted of the matter in 1946 he was a young person and obviously as a youth he had during the depression years apparently many juvenile convictions for minor types of - for various things that I suppose they were involved in as juveniles. So I figured he had come up as a lad who was a bit headstrong and that carried on while he was a young lad and in 1946, I don't know how old he would be then but obviously he was still a young person, and as far as I was aware he had no other, other than that obstruction that you have mentioned, that sort of thing, he had no other problems with the law. And we constantly preach as one of our sentencing factors rehabilitation, and I thought if the fellow had been rehabilitated he had, it was as simple as that.

I have two difficulties with this answer: First, Radlin was 24 when he was convicted of break, enter and theft in November 1946; a 24-year-old is hardly a youthful offender. Furthermore, he was 28 years of age when convicted of obstruction in 1950, and the liquor offence, in 1954, although it is not a Criminal Code offence, indicates a continuation by Radlin of his earlier unlawful conduct. Second, the actions of the senior officers of the O.P.P. with respect to Constables Spurgeon and Calwell and the anonymous letter that Judge Henriksen received enclosing Radlin's criminal record should have alerted the Judge to the

fact that Radlin was a man who it would be as well for him, as a judge of the Provincial Court, Criminal Division, to avoid. However, since the terms of my mandate are restricted to the personal and public association between Judge Henriksen and Radlin in and after June of 1980, it is unnecessary for me to come to any firm conclusion on this point.

The fishing trips ceased in 1970 because a dam was put across the Mississauga River, which spoiled the fishing. However, Judge Henriksen continued to see Radlin. They fished together on Lake St. Clair and went duck hunting. They also saw each other at social functions, and on occasion, they visited each other in their homes on a social basis.

In 1970, Judge Henriksen moved to Tilbury which is about 35 miles from Windsor. Harry Radlin, a brother of Alexander Radlin, was developing a subdivision in Tilbury. When Alexander Radlin came to Tilbury to see his brother, he would sometimes drop in and visit Judge Henriksen. In 1975, Judge Henriksen bought a lot from Harry Radlin and over the next two and one-half years built a house on it. While the house was being erected, Judge Henriksen saw very little of Alexander Radlin because he was busy with the construction of his house. From 1977 to 1980, he again did not see much of Radlin because his social activities were restricted by reason of the heavy mortgage payments on the new house.

In February, 1979, Radlin was charged with impaired driving and exceeding the breathalyzer test. Both charges were dismissed. Judge Henriksen admitted that he knew that Radlin had been charged, but swore that he did not discuss the charges with him.

In August, 1979, the O.P.P. commenced a province-wide investigation into fraud and stolen property. The O.P.P. believed that there was a stolen property theft ring operating in major centres, such as Kingston, Ottawa, Toronto, several small cities in eastern Ontario and to a lesser extent in Windsor. The investigation was given the code number TS88179 and the code name "Manfred." In December, 1979, several arrests were made in other parts of Ontario and that end of the investigation was terminated. It was decided, however, to continue the investigation in the Windsor area under a joint force operation of the Windsor police force and the O.P.P. In the joint operation, the O.P.P. supplied facilities, such as photographic and electronic equipment, and the Windsor police provided manpower. From the middle of 1980 until the end of 1980, Inspector Manneke of the Criminal Investigation branch of the

O.P.P. was the officer in charge. Inspector Manneke is now deceased.

Project Manfred primarily involved electronic surveillance, but there was also a considerable amount of physical and photographic surveillance. As a result of the investigation, a number of criminal charges were laid, such as possession of stolen property, attempting to obstruct justice and procuring. Some of these were charges against Alexander Radlin and resulted in his convictions for procuring in 1981, and possession of stolen property in 1982.

In January, 1980, the police commenced electronic surveillance with respect to Radlin. Transcripts of Radlin's conversations with Judge Henriksen were furnished to the Judge and were used by him in giving evidence at this inquiry and in refreshing his memory as to the dates on which events occurred.

On January 7, 1980, Judge Henriksen had a telephone conversation with Alexander Radlin concerning the obtaining of a copy of a survey of Radlin's house. Radlin had invented a coat hanger which would prevent shoplifting and wanted to put a mortgage on his house to obtain the funds to develop the patent. There was bad feeling between Radlin and the builder who knew the name of the surveyor. Judge Henriksen acted as an intermediary in obtaining the name of the surveyor for Radlin, but he did not go and get the copy of the survey; this was done by Radlin.

On April 21, 1980, Judge Henriksen and Tom Docherty, a Family Court judge, went to Radlin's home. Judge Henriksen said that he and Docherty were mutual friends of Radlin and hadn't seen him for some time. They dropped in to say hello. Radlin had just come back from a trip where he had obtained a salmon, and he invited Henriksen and Docherty to stay for supper.

On May 23rd, 1980, Judge Henriksen and Radlin had a conversation about a fishing trip that Radlin had been on. They discussed the fishing and general matters.

On June 7, 1980, Radlin attended at Judge Henriksen's house with a Mr. Lowe who had been charged with shoplifting. Lowe said that he wanted to go out west and asked Judge Henriksen what would happen if he missed his trial. Judge Henriksen testified that he gave Lowe the following answer:

> I said that a warrant would be issued for his arrest and he would probably be brought back to face trial. So he wanted to know if there was any legal way that he could go out west without causing trouble to himself.

> I said, well, I do not know. I said the offence you are charged with whether you are responsible or not but I said if in fact you are guilty of this offence, I said you can plead guilty and dispose of the matter and if the matter is disposed then you can legally go, you are free to go.

Judge Henriksen swore that Radlin had never done anything like this before, and he told Radlin not to do it again.

On June 10, 1980, Radlin and three others were charged with possession of "several Daulton and Kaiser figurines and assorted men's and women's clothing of a value exceeding $200" contrary to s. 313(a) of the Criminal Code. Radlin appeared in court on that day and the matter was adjourned to June 11.

On June 10, 1980, on the third page of the first section of the Windsor Star, there appeared the following article:

4 arraigned
after raid
on city home

> Four persons were arraigned in provincial court Tuesday after detectives raided a home in the 1700-block of Parent Avenue and seized an estimated $10,000 worth of clothing, figurines and other undisclosed items.
>
> Alexander Radlin, 58, Joan Marie Montreuil, 18, both of Parent Avenue, Dennis Schreinert, 33, of Hanover, Ont., and Sheila Anne Montreuil, 19, of St. Catharines, were charged with possession of stolen property valued at more than $200.
>
> Some of the items are believed stolen from the Niagara area, detectives said.

Judge Henriksen testified that he does not very often read the Windsor Star and that he did not see the article in the newspaper.

On June 11, 1980, Corporal Garnet Albert Matthews of the O.P.P. was working on Project Manfred. As a result of information received, on that morning he went to the Provincial Court Building in the City of Windsor to conduct physical surveillance. He saw Alexander Radlin and a woman standing on the lawn between City Hall Square and the main entrance to the Provincial Court Building. At 10:08 a.m. Corporal Matthews saw Judge Henriksen's green Mercedes automobile drive in to the parking lot on the east side of the building. Judge Henriksen

parked his car and walked toward the east entrance of the building. He proceeded north along the sidewalk toward City Hall Square, walked west along the sidewalk slightly past the main entrance to the court house and had a one-minute conversation with Radlin. He then turned around and went into the building. Approximately five to seven minutes later, Radlin entered the court house. In cross-examination, Corporal Matthews agreed that there was no attempt at concealment by the two men, and people were coming in and out of the building while the conversation was in progress.

Judge Henriksen's testimony as to what happened on June 11 was to this effect: He said that he parked his car. He did not go in the east entrance of the court house, as that entrance requires a key. He claimed that, while he used the east entrance on occasion, he ordinarily used the main entrance to the building. As he approached the main entrance, he saw Radlin and Radlin's girl friend, Joan Montreuil, standing outside the court house. He went over to Radlin and asked him what he was doing. Radlin said that he had to be in court. Judge Henriksen then asked Radlin whether he was a witness, and Radlin answered, "No, I have been charged with possession of stolen goods." Radlin then asked if the Judge had been fishing recently and that was the end of the conversation. Judge Henriksen said that he then walked into the court house. The conversation with Radlin, according to Judge Henriksen, lasted 30 seconds to one minute.

Mr. Rosenberg asked Judge Henriksen why, when he knew that Radlin had been charged with possession of stolen goods, he did not consider that he should stop seeing him. Judge Henriksen gave the following answer to this question:

> A. No, I did not think I should stop seeing him altogether, no. Because I did not know anything about the charge at that particular time other than that it was a charge. I did not know whether there was any merit to it or whether there wasn't, I had no idea.

Having regard to the knowledge that Judge Henriksen had of Radlin's background, I believe that Judge Henriksen should have avoided any association with Radlin after June 11.

There is no doubt that on June 11, Judge Henriksen knew that Alexander Radlin was charged with the offence of possession of stolen property. June 11th is accordingly the commencement date for the first complaint.

The next meeting between Judge Henriksen and Radlin, about which I heard evidence, occurred on Sunday, June 22nd, at

the Thames River Trailer Park. The police knew that Radlin was going to see Judge Henriksen on that occasion, as a result of authorized wiretap interceptions of Radlin's telephone. Not far from Judge Henriksen's house in Tilbury is a trailer park, the Thames River Trailer Park, which is owned by Stella Berbynuk, a sister of Alexander Radlin.

Judge Henriksen testified that on Sunday, June 22nd, he received a telephone call from Mrs. Berbynuk that Radlin was at the trailer park and wanted to see him. Mrs. Berbynuk said that she made the telephone call because Radlin is a large man, and there was insufficient room in the store of the trailer park for him to use the telephone. Mrs. Berbynuk said that when Judge Henriksen arrived at the store in the trailer park that her brother and the Judge left the premises so that she did not hear their conversation.

Judge Henriksen said that Radlin wanted to talk to him about the possession charge. He claims that he told Radlin that he could not help him, and Radlin said that he realized that, but he wanted to tell the Judge the circumstances of the offence. As Judge Henriksen's recital of what Radlin told him is important, I will reproduce it in full:

> A. Yes. Mr. Radlin wanted to talk to me about the possession offence with which he had been charged. And at that time I said well, Alex, I cannot help you in any way in connection with that offence as you know. He said I realize that, he said I would just like to tell you the circumstances of the offence. And he proceeded to tell me that a gentleman whom I know now from seeing the transcript, by the name of Schreinert I think it was or something like that, had brought some figurines to him at his residence behind his main home which as I say we commonly refer to it as a garage. And there was a discussion about Mr. Radlin purchasing these figurines.
>
> Apparently Mr. Radlin I gather knew that, at least I assumed from the way he talked, knew that these figures were stolen. And he and Mr. Schreinert subsequently went from the garage where he had met this chap into the main residence and were having coffee. I think they brought the figurines into there with them. I do not know who brought them but I understand they were there. They were having coffee and the reason they were having coffee, I should outline, is maybe the background would make more sense to you.

Mr. Radlin apparently, the lady he was in with, Joan, living with, was a sister apparently of the chap that had brought these figurines. And I do not know whether she was there or not, I am not sure. But anyway they got together in the residence to have coffee. And he said that during the time that they were drinking the coffee he had told Mr. Schreinert that he did not wish to purchase these figurines from him and that he, any money that he personally had was going to be tied up in his new garment bag business and that even if he wanted he would not have had the money available to purchase them but that he did not want them and was not going to purchase them. He said shortly thereafter while they were still engaged in drinking the coffee that the police had raided his residence and had seized the figurines. I do not know if he mentioned that they had arrested him or not. In any event he indicated after that, he said well what do you think my chances are in this matter.

I said well, I have no idea what your chances are. I said if what you are telling me is correct you may have a defence. But I said it depends upon what your lawyer subsequently advises you and it depends upon disclosure. My experience in the past has been that frequently that people do not necessarily tell you the whole circumstances of their problem and that's why I very briefly told him, I said I do not know what your chances are, I said you are going to have to find out. If disclosure bears out what you are telling us and if your lawyer advises you you may well have a defence in that if you were not going to purchase the goods then you may or may not have been in possession. I left it at that.

Q. Now did Mr. Radlin have a lawyer at that time?

A. He had Mr. Thompson acting I believe.

Q. Was there any discussion about Mr. Thompson?

A. He had asked if Mr. Thompson, what kind of lawyer he was and I said in my opinion he is a capable lawyer.

I also forgot to mention, during the course of the conversation he asked about election. He asked which court do you think that I should elect to be tried in.

I said well, I do not know, I said again it depends on the advice you receive from your lawyer. But if I were in your shoes I would prefer to be tried in the Provincial Court as opposed to the other courts simply because the Provincial Court deals with a great number of these types of cases and should you for any reason be found guilty I believe that your sentence would be, apt to be less perhaps than it would be if you went through an expensive jury trial and were subsequently convicted in another court. But I said you are going to have to find out what your lawyer says on it but that would be my thought.

Sometime after June 22nd and before the weekend of August 2nd, Radlin attended at Judge Henriksen's house with his girl friend Joan Montreuil who was a co-accused with Radlin on the charge of possession. Judge Henriksen said that Radlin arrived unexpectedly. He gave the following testimony about what he said to Radlin on this occasion:

A. Well, the part I believe that this Inquiry would be interested in - we talked about fishing and hunting and other matters, but the part that this Inquiry would be interested in, I got joking with him and I said "Alex, you're going to look cute pushing a mop."

Q. What did you mean by that, in jail did you mean?

A. In jail. I mean I didn't know as I said any more than what I had already heard about the matter, but I was teasing him and I said "You're going to look cute pushing a mop", and then realizing that he was pretty stuck on the young lady that he was with, I said to him I said "You've got the perfect defence. After all", I said, "the gal had possession; at least she can do the time for you in the event of a conviction", or something to that effect.

Q. Now when you said that to Mr. Radlin, were you serious? Were you being serious?

A. Certainly not. I wouldn't say that to him if I was serious with his girl friend sitting right there.

Q. Was there anyone who was present who you believed took that remark seriously?

A. Certainly not, no. I was smiling. I said "You'd look cute pushing a mop."

Q. Was there any talk on that occasion about the merits of the case?

A. None whatsoever. In fact that was the only discussion to deal with it at all.

As will be seen, Judge Henriksen repeated a somewhat similar story in an interview with Inspector Manneke and Constable Allen on February 17, 1981.

On July 23, 1980, Radlin and Joan Montreuil appeared before Judge Henriksen on the charge of possession. Defence counsel was requesting an adjournment because he had not yet received disclosure from the Crown. The request for adjournment was not opposed, and Judge Henriksen adjourned the matter to August 12, 1980, for election and plea.

Judge Henriksen was asked by his counsel why he did not disqualify himself when he saw Mr. Radlin appearing before him on July 23rd. Judge Henriksen explained that, in Windsor, there are three courts. Two are trial courts and one of the courts, No. 3 Court, in the basement of the building, is a remand court. When he is sitting in remand court, Judge Henriksen said he did not trouble himself whether or not a person appearing before him was a personal friend since all remands and adjournments are on consent. He stated that he would not fix bail for a friend but would put the application over for some other judge to deal with.

In July, the O.P.P. decided to conduct a physical surveillance of Judge Henriksen's home in Tilbury. They selected as a site for their observation post a place in Thames Valley Trailer Park which had a view of Judge Henriksen's house. Constable George Leslie Hiles of the O.P.P., who was assigned to Project Manfred, assisted in placing a trailer on a site in the trailer park on July 15, 1980. The police did their best to conceal their activities. However, Mrs. Berbynuk, the owner of the trailer park, said that she became suspicious, made some enquiries and within a few days concluded that Judge Henriksen was being watched. She testified that she told Judge Henriksen:

> I think you are being watched because I have some very strange campers. They are not fishermen, they are not campers and their camper is closed at all times and they come in and out at all hours, and they are supposed to be engineers.

I did not find Mrs. Berbynuk's evidence, as to how she discovered that Judge Henriksen was under surveillance, to be convincing. The way in which she obtained that knowledge is, however, irrelevant. There is no doubt that she informed Judge Henriksen that he was being watched. Mrs. Berbynuk was quite definite that she did not tell Judge Henriksen that he was being watched by the police; she only told him that he was being watched.

Judge Henriksen, on the other hand, swore that he was told by Stella Berbynuk that it was the police who were watching his house. He said that he consulted his lawyer, Frank Montello, Q.C., on July 23rd about the surveillance. (It will be recalled that this was the same day that Radlin appeared before Judge Henriksen on the adjournment of the charge of possession.) Judge Henriksen said that he assumed that it was the O.P.P. that were conducting the surveillance because his house is situated outside the Windsor city limits.

In cross-examination, Mr. Brown, Commission Counsel, asked Judge Henriksen why he did not speak to the O.P.P. about the surveillance. Judge Henriksen replied to this question and to questions from myself on this point, as follows:

> A. Well, as I said, I thought they were there. I wasn't sure it was them, but I thought they were there from what she said, and I didn't know - I figured they were watching me. If they were watching me it was obviously I gathered because of the association I had with Mr. Radlin I figured.
>
> Q. Do you not think it would have been appropriate as a judge to approach someone in the Ontario Provincial Police at that time to raise the question?
>
> A. No, I wondered why they hadn't approached me. I wondered why they were observing rather than approaching me about it.
>
> THE COMMISSIONER: You don't think you should have gone to the police and said, "Look, if there is anything you want to know, let me know, and I will make full disclosure of it."?
>
> THE WITNESS: That is what I would have done if they wanted to know, and I was surprised they didn't come and ask me if they wanted to know something. Why were they watching me?

THE COMMISSIONER: You thought they should have come to you?

THE WITNESS: Correct, sir. If they wanted to know something I would have been happy to tell them.

In addition to the surveillance of Judge Henriksen's house, the police were maintaining physical surveillance at other locations. Sergeant Gerald Norman Westlake of the Windsor Police Force, who was engaged in Project Manfred, gave evidence that on Sunday, August 3, 1980, he received information that Judge Henriksen was going to a cottage at 858 Point Pelee Drive to meet Alex Radlin. At about 1:50 p.m. Sergeant Westlake and Constable Stephens proceeded to the cottage. At about 2:45 p.m., in the course of the surveillance, Sergeant Westlake saw Radlin standing at a barbeque beside the cottage, and he observed Judge Henriksen go over and talk to him. Although there were 40 to 50 people at the back of the property where the party was taking place, Sergeant Westlake testified that Radlin and Judge Henriksen were alone when they had their conversation, the closest person being some 30 to 35 feet away.

Judge Henriksen gave the following testimony regarding the incident on August 3rd: The cottage at 858 Point Pelee Drive was owned by Dr. Alphonse Leblanc, a mutual friend of Judge Henriksen and Alex Radlin. On Saturday, August 2nd, Dr. Leblanc's son was married, and a reception was held at the Point Pelee cottage. Alexander Radlin was at the wedding and at the reception. Judge Henriksen said that he saw Radlin at the wedding, and Radlin asked him if he would be attending Dr. Leblanc's party on the following day.

On Sunday, August 3rd, Dr. Leblanc was having his annual party for the staff of Windsor Western Hospital. Judge Henriksen said that he was also invited to the staff party. On Sunday, August 3rd, Judge Henriksen telephoned Dr. Leblanc; this call was recorded by the police. Judge Henriksen told Dr. Leblanc that he planned to attend the party that day and return a van borrowed from Dr. Leblanc at the wedding on the previous day and that Alex Radlin had mentioned that he wanted to see him.

Judge Henriksen denied that he made a special trip to Dr. Leblanc's cottage on August 3rd to see Radlin. Although Judge Henriksen did his best to put a favourable light on his visit to the cottage on Sunday, August 3rd, I find that his principal reason for going to Dr. Leblanc's cottage was "because Alex wanted to see" him.

Judge Henriksen gave the following version of his conversation with Radlin at the barbeque on Sunday, August 3rd:

Q. What was the conversation that you had with Mr. Radlin on that occasion?

A. When I saw him and was talking to him as the officer indicates, he asked me, he said do you know if my lawyer Sandy Thompson has had disclosure. As you recall in the adjournment thing and what not, apparently there had been some delay in getting the disclosure. And I said I do not know anything about it.

He then went on to tell me, he says, I am thinking perhaps that my defence will be that the figurines that I mentioned to you that I am in the business of selling these figurines because I have sold some in the past and that I will call witnesses to this effect. And I said, Alex, do not be a fool, I said I do not believe what you are telling me and I said in my opinion I do not think anybody else would believe. But if what you told me before is correct you may well have a defence, as I mentioned to you before, I said you may have a defence. The fact that you were not going to buy the goods may be a defence but I said it is going to depend entirely on what your lawyer tells you. You are going to have to do what he tells you and it depends upon the disclosure because I do not know what's what of the thing at all.

Q. What did you mean by it will depend on a disclosure?

A. Again as I said, the conversation I had with him at the trailer park was a very short conversation concerning that. And this conversation I was having with him at the party was even shorter. So what I had, the only knowledge I had of his charge is what he had told me in the trailer park.

I reiterated to him, once he told me what I have just indicated, I told him do not be crazy. I said if what you said is correct and depending on what your lawyer advises you on disclosure you may have a defence for this. I said do not go advancing something that is not, in my opinion, correct.

Q. Were you still then operating on the assumption that what he had told you before was true?

A. I thought he was probably telling me the truth. But as I said with anybody that tells you things you do not know and I was not acting for him and I was not going into any great detail. I was merely giving him the least possible advice I could give him and at the same time remain sort of a friend. You know, he had been a friend for years so I did not want to say well, get lost. I knew I was not going to deal with the case so I kept it very brief, I talked to him, as I say, for a very few seconds and then I joined the rest of the party and avoided him like the plague.

It's as simple as that, with which he I am sure will agree.

On Monday, August 11, 1980, Constable Hiles was in the observation post at the trailer park. At 8:05 a.m. he saw a white motor home parked in the laneway adjacent to Judge Henriksen's house in front of the east garage door. Constable Hiles did not know when the motor home arrived at Judge Henriksen's house, since he commenced his observations at 8:05 a.m. on that morning. At about 8:30 a.m., Constable Hiles saw two persons walk out from the garage, go over to the motor home and enter it. A pale green Mercedes Benz automobile was then backed out of the west garage door. At approximately 8:30 a.m., the automobile proceeded west from the Henriksen residence. The motor home was then backed out and also proceeded in a westerly direction. Constable Hiles left the observation post, got into his car and started to drive out of the park. At this point in time, he saw the motor home turning off the main road and coming into the trailer park. Constable Hiles had to stop his vehicle to let the motor home pass him. He observed that the driver was Alex Radlin.

Judge Henriksen gave the following evidence regarding the incident of August 11. He said that Radlin arrived at his house at approximately 8:00 a.m. Radlin's reason for coming to the house was to return a fishing rod and reel that he had borrowed some time ago from the Judge. Mr. Rosenberg asked Judge Henriksen if he had had any discussions with Radlin regarding the outstanding criminal charge, and Judge Henriksen gave this answer:

A. Absolutely none except to the extent that I told him, I said until this matter is concluded, if it is concluded in your favour fine and dandy but until it

is I do not want you visiting me further here and having anything further to do, I did not think it was a wise thing at that point.

At that stage also, as I said, I was aware of the fact that my premises were being watched.

On October 24, 1980, Radlin was arrested on five counts of procuring female persons for the purpose of having illicit sexual intercourse contrary to s. 195(1)(a) of the Criminal Code. On the same day, he was arraigned before Judge Henriksen. On consent, Judge Henriksen adjourned the case to 2:00 p.m. for a show cause hearing to fix bail. Judge Henriksen gave evidence that counsel had seen him in his chambers on the matter of bail, but he had told them that he was not prepared to fix bail even though it was on consent, as Radlin was a friend of his.

On December 22nd, 1980, Radlin again appeared before Judge Henriksen on the procuring charges. A preliminary hearing had been arranged for May 4, 1981, and, on consent, the matter was adjourned to that day.

On February 17, 1981, Inspector C.M. Manneke and Provincial Constable R.J. Allen attended on Judge Henriksen in his chambers at the Provincial Court Building in Windsor. Inspector Manneke was wearing a body pack tape recorder, and the entire conversation was recorded. The following is the transcript of the conversation between Judge Henriksen and Inspector Manneke:

Henriksen	Come in (pause) come on in
Manneke	Good morning how's it going sir not too bad you Constable uh Allen
Henriksen	Ya sure
Manneke	We'll just take a minute of your time
Henriksen	Ya (unintelligible)
Manneke	Have you got early court this morning
Henriksen	I don't know which court I'm in today (pause) um I'm scheduled for early remand number three

Manneke — At nine thirty

Henriksen — Ya but I always get to court by that time

Manneke — Oh oh I'll just take a little bit half minute of your time uh a minute if I could and uh (pause) it's sort of like this uh I've got to ask you one question sir

Henriksen — Certainly

Manneke — Okay if I may alright then and that is uh have you ever had any discussion with Alex Radlin about his defence to the charge of possession of stolen goods that he was charged with on June the eighteen er June the tenth rather of last year

Henriksen — Ya

Manneke — You have have you

Henriksen — Ya

Manneke — What did you discuss sir

Henriksen — I discussed with him he asked about if he were to uh which way he would make his election in court

Manneke — Right

Henriksen — And I suggested to him that he if I were him that I would elect for it in the Provincial Court

Manneke — Right

Henriksen — The only reason I would elect court in Provincial Court is because of course we do a hell of a lot more criminal trials than the uh County or Supreme Court does

Manneke — Right

Henriksen — And therefore that in the event that he should be convicted which he may or may not I wouldn't know

Manneke — Uh huh

Henriksen — In the event that he should in my opinion he would have a better sentence well that's just my own view that he would have a a sentence that would be in a in a range that you would expect more than you might in a court which deals with maybe forty or fifty uh at the most a year where we might deal with three or four hundred a year

Manneke — Okay but did you suggest a defence to him at all

Henriksen — No I've never suggested a defence to him he asked me about his defences I never suggested a defence to him

Manneke — I see

Henriksen — He asked me about a defence for (unintelligible)

Manneke — Uh huh

Henriksen — Uh but I never suggested any defence to him no

Manneke — Right

Henriksen — No

Manneke — None at all

Henriksen — No not a suggestion of a defence to him no

Manneke — Right

Henriksen — I was kiddin him once uh

Manneke — Yeah

Henriksen — He had a girlfriend that he was thinking of marrying you see at that stage

Manneke Right

Henriksen An uh I was kiddin (laughs) I kidded him once but ah his girlfriend was sitting in the uh in our place and uh I said you've got the perfect defence Alex I said you've got a here's here's your girlfriend all of a sudden you got these stolen goods that belong to her I said I said you've got the perfect defence she goes to jail for a uh uh period of time or something I forget how it went but I was clowning with them because I know damned well you know there was no way he was going to you know

Manneke Right

Henriksen Do anything to his girlfriend

Manneke Right

Henriksen In fact he was (unintelligible) stuck on her as far as I could see although I never thought it would work out because she was just young

Manneke Uh humm

Henriksen She was I don't know what twenty one or twenty two or something like that

Manneke Um humm

Henriksen And uh but Alex isn't young eh

Manneke Right

Henriksen And I figured there was no way that that that

Manneke Uh huh

Henriksen This would have a you know (unintelligible)

Manneke Right I take it then that

Henriksen (unintelligible)

Manneke You did not suggest a defence to him that here's a defence per se that could use in this case

Henriksen No no no no we discussed we discussed defences

Manneke Mm hmm

Henriksen That he had he was talking about he discussed a couple of defences he had

Manneke Uh huh

Henriksen As a matter of fact but I never suggested a defence to him no

Manneke Right could you just could you just tell me what the what his defences could be or anything like that

Henriksen Well I don't remember them all I I remember there were there were two things he was talkin about one and I'm I'm not that not that (unintelligible) remember it was sometime back you know

Manneke Right

Henriksen (unintelligible) you know one of them if seems to me was the fact that he was selling a lot of these uh things that he's in possession of that he's been selling them as a as a I that he's a collector he been selling them

Manneke Mm hm

Henriksen And that he is going to get people who he sold these to

Manneke Mm hm

Henriksen As witnesses for his for his uh for his side

Manneke Mm hm

Henriksen Uh that's what uh and uh what the hell was it um let me think (pause) another possibility is something to do with the fact he's in this hanger he's in the hanger business

Manneke Mm hm

Henriksen For uh he's got a hanger that he's patented

Manneke Oh his Garm Guard business

Henriksen Stolen

Manneke Ya right

Henriksen People

Manneke Right

Henriksen Stealing things

Manneke Right

Henriksen And he had all his money tied up as I understand in that

Manneke Mm hm

Henriksen Particular venture so he uh but that wasn't defence this is what he was telling us this was this wasn't that's not a defence either he is telling me I've got all my money tied up there so he says I wouldn't be buying stolen stuff anyway

Manneke Mm hm

Henriksen But that's about all I can recall uh of him telling about the

Manneke Right

Henriksen That I recall off hand eh

Manneke Right

Henriksen He was telling me about

Manneke Very good sir now is you've never suggested anything to him

Henriksen No not a not not a suggestion on what he should do or why he should

Manneke Right

Henriksen He asked me about

Manneke Right

Henriksen His defence

Manneke Right

Henriksen But I never told him well go ahead and do this or go ahead and do that

Manneke Ya

Henriksen Or you should do this or do that the only but I did suggest to him as I say that he stay in Provincial Court

Manneke Ya

Henriksen And the reason I suggested that he stay in Provincial

Manneke Right

Henriksen Court is as I've told you

Manneke Very good

Henriksen Ya

Manneke Thank you very much sir if I won't take anymore of your time I know you have a busy day

Henriksen Right you are

Although Judge Henriksen mentioned in a roundabout way to Inspector Manneke the "false" defence which Radlin had related to him, he did not tell Inspector Manneke that he believed it to be a lie, nor did Judge Henriksen tell Inspector Manneke about Radlin's original story as to how he came to have possession of the figurines. Mr. Rosenberg asked the following question about this matter and received the following answer:

> Q. Now have have told us - you have given us a somewhat lengthy explanation about where the goods came from and so on. You did not provide that to Mr. Manneke?
>
> A. No, I was not - I felt that they had to prepare their own case. I wasn't going to volunteer things to Mr. Manneke other than what he had.

Apart from saying "hello" to Radlin at a funeral in 1981 for one of Dr. Leblanc's sons who was killed in an automobile accident, Judge Henriksen swore that he had not spoken to Radlin since August 11, 1980. There is no evidence to contradict this testimony.

This essentially concludes the evidence of Judge Henriksen's personal and public association with Alexander Radlin. A few other matters, however, were put before me which help to complete the picture in this part of the inquiry. On March 27, 1981, Radlin was charged with a single count of procuring. On May 25, he pleaded guilty to seven counts of procuring (only six have been placed in evidence before me). He was sentenced by Provincial Judge Carson to a fine of $250 on each count and in default of payment to ten days consecutive together with one day in jail on each count, the one day sentences being concurrent.

On November 26, 1982, Radlin, having elected trial in the County Court, pleaded guilty to the charge of possession of stolen property and was sentenced by The Honourable Judge Dunlap to one day in jail and a fine of $2,500 with six months to pay and in default of payment to six months in jail.

On April 29, 1981, Judge Henriksen was charged with two counts of attempting to obstruct justice. The two charges were as follows:

> 1. That he between the 1st day of August, 1980 and the 4th day of August, 1980 inclusive, at the Township of Mersea in the said County of Essex and elsewhere in

the Province of Ontario, unlawfully did wilfully attempt to obstruct, pervert or defeat the course of justice in a judicial proceeding by suggesting to or advising Alex Radlin, who was charged in an Information then before the Provincial Court (Criminal Division) in the City of Windsor in the County of Essex, with the offence of possession of property of a value exceeding $200.00 knowing the same to have been obtained by the commission in Canada of an offence punishable by indictment, that, if the police did not have wiretap evidence and depending upon disclosure, his only hope with respect to that charge was to advance a false defence, namely, that he was not going to buy the property in question and that the police had raided him before he had a chance to get rid of the property or the person or persons who had brought the property to him, contrary to section 127(2) of the Criminal Code.

2. That he between the 1st day of August, 1980, and the 4th day of August, 1980, inclusive, at the Township of Mersea in the County of Essex and elsewhere in the province of Ontario, unlawfully did wilfully attempt to obstruct, pervert or defeat the course of justice in a judicial proceeding by suggesting to or advising Alex Radlin, who was charged in an Information then before the Provincial Court (Criminal Division) in the City of Windsor in the County of Essex, with the offence of possession of property of a value exceeding $200.00 knowing the same to have been obtained by the commission in Canada of an offence punishable by indictment, that, depending on the existence of wiretap evidence and upon disclosure, he decide to advance a particular defence based on its perceived acceptability to the trier of fact rather than its truthfulness, namely, that he was not going to buy the property in question and that the police had raided him before he had a chance to get rid of the property or the person or persons who had brought the property to him, contrary to section 127(2) of the Criminal Code.

Judge Henriksen was committed for trial on the charges after a preliminary hearing on August 12, 1981. He was tried in Supreme Court by a Supreme Court judge and jury on the two charges. Judge Henriksen claimed solicitor and client privilege in respect of several intercepted conversations which were subsequently ruled by the Supreme Court judge to be inadmissible. After this ruling, the jury was directed to enter a verdict of acquittal which they did on June 28, 1982.

The Crown appealed this decision to the Ontario Court of Appeal which dismissed the appeal on May 2nd, 1983. The Crown applied for leave to appeal to the Supreme Court of Canada, which application was heard on June 20, 1983. Leave to appeal was refused by the Supreme Court of Canada on September 27, 1983.

THE ROYALE TAVERN INCIDENT

The second complaint against Judge Henriksen is:

> (b) That His Honour Judge Lloyd Henriksen did, on or about the 15th day of April, 1980, become involved in a disturbance in a public place, namely the parking lot of the Royale Tavern in Windsor, Ontario, and insist to the police upon his ability to drive his automobile, despite his obvious state of intoxication;

On April 15, 1980, Judge Henriksen sat in court until 2:00 p.m. At the conclusion of the day's sittings, he contacted John Stewart, a salesman for the Sears Company, and invited Stewart, who had the day off, to have lunch with him at Greek Town in Detroit. Judge Henriksen and Stewart had been friends for six or seven years. Stewart had apparently at one time been a bodyguard and general factotum for the entertainer Paul Anka.

Judge Henriksen and Stewart went to a restaurant called The Parthenon in Detroit. The two men were friends of the owner. They were at the restaurant for a considerable period of time. Judge Henriksen testified that he was drinking "cold duck splits" which is a mixture of champagne and burgundy. The "cold duck splits" are served in a bottle containing some six to eight ounces of wine. The Judge said that he drank "three or four at least" of these bottles.

After dinner, Judge Henriksen, who was driving his green Mercedes Benz automobile, drove Stewart back to Windsor. Stewart lives in Tecumseh near the Royale Tavern, and Judge Henriksen was going to drive Stewart to his home.

A diagram of the area and a number of photographs of the Royale Tavern were filed as exhibits. The tavern is a rectangular-shaped building about 40 feet wide by 120 feet long at the corner of Dawson and Wyandotte Streets in the City of Windsor. It is a two-storey building, but the windows on the first floor have been bricked up. On the second floor, there are some motel or apartment units. On the east side of the tavern is Dawson Street. On the west side there is a small parking lot. There is a dwelling house beside the parking lot and a Liquor Control Board store beside the house. The Liquor Control Board store also has a parking lot on the west side. There are a number of stores and small business establishments in the vicinity of the tavern.

The owner of the tavern, Steve Piskulic, was a mutual friend of Judge Henriksen and Stewart. Judge Henriksen said that Stewart suggested that they stop and see Piskulic. Judge Henriksen claimed that he had only been in the tavern twice before, and, on those occasions, only to look for the man who was installing heating fixtures in his new home. In any event, Judge Henriksen and Stewart drove to the Royale Tavern, parked, and went in.

Although there was very little contradiction in the evidence given at the inquiry, there were a number of contradictions, as well as considerable confusion, in the evidence as to what occurred during the next two hours at the Royale Tavern. I have, therefore, had to determine what evidence is to be believed and what is to be disbelieved. In some instances, I have rejected the evidence of Judge Henriksen. He had been drinking heavily on the evening in question and, on some matters, where there is contradiction, I have preferred the evidence of other witnesses. Based on my observation of the witnesses, I find the facts as to what occurred at the Royale Tavern on the evening of April 15, 1980, between 8:00 p.m. and 10:00 p.m. to be as follows:

Judge Henriksen and John Stewart entered the tavern at approximately 8:00 p.m. Judge Henriksen was moderately intoxicated at this time. The two men sat at a table close to the bar. During the period that he was in the bar, Judge Henriksen drank eight or nine beers.

On the evening of April 15, 1980, there were two men present in the Royale Tavern whom Judge Henriksen had previously convicted and sentenced, namely, Douglas McMurren and Leo John Lavin. Douglas McMurren had arrived at the bar at 6:00 p.m. He is a frequent customer of the Royale Tavern. He had had about a dozen beers before Judge Henriksen arrived, and there is no doubt that he was highly intoxicated at all relevant times on the evening of April 15.

Since 1958, McMurren had been convicted several times for impaired driving. At least one and perhaps more of these convictions had been imposed by Judge Henriksen. McMurren believed that the last time he had been convicted by Judge Henriksen was in 1975. In spite of his denials, I find that McMurren on that evening felt considerable animosity toward Judge Henriksen, and being heavily intoxicated, had no hesitation in stirring up trouble for the Judge.

Leo Lavin, like McMurren, was also a heavy drinker. He arrived at the Royale Tavern after Judge Henriksen. He had been convicted by Judge Henriksen on at least one and perhaps two

occasions prior to April 15, 1980. Like McMurren, he had a number of convictions for drinking and driving offences. Lavin had had some drinks with Judge Henriksen in 1979 at the Richelieu Inn. Judge Henriksen recognized Lavin and invited him to sit at his table and have a drink. Lavin sat down and was introduced to John Stewart. Judge Henriksen told Lavin on several occasions during the evening that Stewart was his bodyguard - these remarks were likely made in jest.

When Judge Henriksen entered the bar, he was recognized by some of the patrons, including McMurren. About 15 minutes after Judge Henriksen arrived, a patron came over and asked Judge Henriksen for legal advice. Judge Henriksen told him that he couldn't assist him, and Stewart told the man to leave the premises. At this point, McMurren, who had overheard the conversation, intervened and told Stewart that he had no right to tell the man to leave the premises. McMurren then began to berate the Judge for having convicted him of impaired driving. It could not, in my opinion, have failed to be obvious to Judge Henriksen that McMurren was angry because the Judge had convicted and fined him for impaired driving. In answer to a question from Mr. Rosenberg whether McMurren appeared to be upset, Judge Henriksen answered:

> A. Yes, he seemed to be upset about the fact that I was the person that had convicted him.

Judge Henriksen was not so intoxicated at this time that he was unable to appreciate that McMurren was drunk and wanted to cause trouble.

Shortly after this incident at the Judge's table, McMurren, who had returned to the bar, began to shout at the Judge: "Your turn is coming." From time to time, he continued to shout this or similar remarks at the Judge, and he went back and forth to the Judge's table. McMurren's shouting stirred up the other patrons of the tavern.

About an hour after he arrived, Judge Henriksen offered to engage in "Indian wrestling" or "wrist pulling" with Leo Lavin. Judge Henriksen took off his coat and rolled up his sleeves. He pulled three times with Lavin. This was cause for concern to Steve Piskulic, the owner of the tavern. Although Piskulic denied that there was any Indian wrestling and claimed that he never permitted it in his tavern, he gave evidence that he "always frowned on any arm wrestling going on in that it will eventually end up in a fight." Events on the evening of April 15 proved him right.

About 9:30 p.m., voices started to be raised, and there was some pushing and shoving around the Judge's table. Piskulic could see that matters were getting out of hand, and he decided to try to get some assistance for the Judge. He telephoned Bob Serbu, a detective on the Windsor Police Force, who was a friend of Judge Henriksen and of Piskulic. Serbu was on duty so Piskulic asked police headquarters to try to reach him on the radio. In the meantime, he telephoned Ed Chudyk, a restaurant owner in Windsor, who was also a friend of Judge Henriksen and of Piskulic. Piskulic said that he told Chudyk:

> A. I just said to come, that some people were getting belligerent towards the Judge, if he could come down and see that nothing happened or if he could help me with the situation.

The belligerence, according to Piskulic, related to legal matters in which patrons of the bar had appeared before Judge Henriksen and had been convicted and fined.

Judge Henriksen went to the washroom. When he returned there was more pushing and shoving around his table. In the course of the melee, Stewart was struck in the face and started to bleed. Piskulic ordered the persons at Judge Henriksen's table to leave the premises. They were followed outside by a number of the patrons.

The events leading up to the incident in the parking lot, while not strictly part of the complaint, constitute a necessary background to the parking lot incident, and counsel for Judge Henriksen agreed that this background was necessary in order to properly understand the incident in the parking lot.

The second complaint is limited to what happened in the parking lot of the Royale Tavern. I propose, therefore, to examine in detail the evidence of the various witnesses who testified on this matter.

As I have said, there is a small parking lot on the west side of the tavern. Vehicles are parked at right angles to the west wall of the tavern, parallel to Wyandotte Street. There is also sufficient room for a row of automobiles to be parked facing the empty dwelling house on the west side of the parking lot. When Judge Henriksen arrived at the tavern, he parked his green Mercedes automobile with the front facing the west wall of the tavern, in the second parking place from the front. When Judge Henriksen came out of the tavern, there were no other vehicles parked in the parking lot.

On the evening of April 15, Constable Kevin John Holman and Constable Ronald James Hartigan were cruising in a marked police car; the two constables were in uniform. Between 9:45 and 10:00 p.m., they received a call to attend at the Royale Tavern. It took them about 5 minutes to get there. When they arrived, they pulled into the tavern parking lot and stopped behind Judge Henriksen's car.

Constable Holman said that the only vehicle parked in the lot was the green Mercedes. When he arrived, the motor of the Mercedes was running and a person, who he subsequently identified as Judge Henriksen, was seated behind the wheel. There was a group of five to seven males standing at the back of the car. When asked if the five to seven males were doing anything, Constable Holman answered:

> A. Yes, they were yelling and pointing towards the Mercedes and they were saying that - the discussion was to lock the person up who was seated in the vehicle for impaired driving.

On Judge Henriksen's condition, Constable Holman gave this evidence:

> A. My observation was that Judge Henriksen was impaired due to a previous consumption of alcoholic beverage. I observed that his eyes were bloodshot and watery, his speech while talking to Constable Hartigan and Constable Serbu was slurred; he was unsteady on his feet. I observed at one time he used the car for support.

Constable Hartigan confirmed the evidence of Constable Holman that the motor of the Mercedes automobile was running and that a man, later identified as Judge Henriksen, was seated behind the wheel. Constable Hartigan testified that John Stewart was standing at the right front fender of the car and he had blood on his face. When asked what the crowd was saying, Constable Hartigan said:

> A. They were shouting that the Judge was drunk, that he had taken their licence and it was his turn to be locked up.

Constable Hartigan said that Judge Henriksen did not respond to these comments.

Constable Hartigan confirmed Constable Holman's testimony that Judge Henriksen was impaired. When asked if he made any decision about the degree of impairment, he answered:

> A. He was heavily - appeared impaired and should not have been driving a car. I tried to explain to him what the crowd was shouting, but he didn't seem to comprehend what I was saying, and it was immediately after that time that Constable Serbu attended and talked to him.

Judge Henriksen told Constable Hartigan that he was sober enough to drive and that he would take a breathalyzer test. At this point, Constable Serbu and Sergeant Kelly arrived. Constable Serbu told Constables Holman and Hartigan that he would take over the investigation and that they could leave.

On the evening of April 15, Constable Serbu was working in the Special Investigation Division with Sergeant James Kelly. (Constable Serbu has since resigned from the Windsor Police Force. He was not called as a witness at the inquiry, but Sergeant Kelly was called and gave evidence.) Constable Serbu and Sergeant Kelly were in plain clothes in an unmarked police car. Constable Serbu received a telephone call from Steve Piskulic to go to the Royale Tavern. When Constable Serbu and Sergeant Kelly arrived at the tavern, they parked in front of the Liquor Store, which is located to the west of the tavern. As they approached the parking lot of the Royale Tavern on foot, Sergeant Kelly said that they saw some twelve to fourteen people standing around Judge Henriksen's car.

Sergeant Kelly testified that as they drew near to the crowd, they could hear loud voices in argumentative tones directed towards Judge Henriksen. Sergeant Kelly said that Judge Henriksen was speaking back to the crowd. The people standing around the car were saying, "He should not be driving," and, "You're not going to let him drive that car." Sergeant Kelly observed Judge Henriksen's condition and concluded that if Judge Henriksen drove his ability to drive would be impaired by alcohol. Sergeant Kelly said that during the time that he was at the scene, Judge Henriksen was in and out of his automobile. Judge Henriksen told Sergeant Kelly that he felt he was in a fit condition to drive and that he was going to drive. However, Sergeant Kelly told the Judge that he was not going to drive and that if he did, he would be arrested.

After this conversation, Judge Henriksen got in the back seat of his car and Ed Chudyk drove the car away. Sergeant Kelly said that he was at the scene from five to seven minutes. He

asserted that he extended no special treatment to Judge Henriksen. Although Judge Henriksen could have been charged with having the care and control of a motor vehicle while his ability to drive was impaired, Sergeant Kelly said that if an ordinary citizen had acted in the same way as Judge Henriksen had acted, he would not have charged him. I am satisfied that Judge Henriksen did not ask the police for any special treatment nor was any special treatment accorded to him.

In the meantime, Constables Holman and Hartigan had circled the block and came back to the scene. Constable Hartigan said that the crowd was "still boisterous and highly agitated." It took the two constables a minute or two to circle the block. They parked at a point where they could observe what was going on in the parking lot of the tavern. When things didn't appear to be clearing up, they returned to the scene. They told Constable Serbu that they felt that the disturbance had gone on long enough and that it should be stopped. Constable Hartigan then spoke to Judge Henriksen, and the Judge said that he wanted to take a breathalyzer test and that he would go downtown for that purpose. Constable Hartigan said that Constable Serbu then spoke to the Judge and that the Judge got in the back seat of the car. John Stewart got in the front passenger seat, and Ed Chudyk drove the automobile away.

On the evening of April 15, Constable Holman prepared what is called an "Inspector's Report" on the incident. Constable Holman admitted at the inquiry that this report was inaccurate. In the report, he stated that he and Constable Hartigan could detect only a slight odour of an alcoholic beverage on the Judge and that Judge Henriksen "was not about to drive his car."

On November 11, 1983, Constable Holman made a further report for the Judicial Council. The facts contained in this report corresponded with the testimony that he gave under oath at the inquiry. Constable Holman explained his reason for making the inaccurate report on April 15 in this way:

> A. The purpose of this report was to alert our superiors that we were at that area at that time and the purpose of the report, the way it reads, was a favourable report to Judge Henriksen who at the time in my opinion was a well liked judge in the city. If we went into further detail or detail, this would only cause an embarrassment to Judge Henriksen, one that I believe was not necessary because we felt that the incident was a closed matter after Judge Henriksen was driven away.

Constable Holman conceded that Judge Henriksen had nothing to do with his making the inaccurate report; it was Constable Holman's decision and his decision alone to make the report in that form.

In cross-examination, Constable Holman agreed with Mr. Greenspan that the last paragraph of his first report was, however, accurate. This paragraph stated:

> In the writer's opinion this crowd saw a chance to try and make an example out of a person with authority and stretched it out of proportion.

Constables Holman and Hartigan said that the events outside the tavern lasted ten to fifteen minutes.

Douglas McMurren said that when he heard the police were outside, he went out to the parking lot because he was curious. He testified that Judge Henriksen's car was running and that Judge Henriksen was behind the wheel. According to McMurren, a plainclothes policeman was trying to get Judge Henriksen out of the car. Judge Henriksen said, "This is my fucking car and I will drive it." McMurren said that there were about a dozen people in the parking lot, and the crowd was yelling at the police, "Take him to jail." He denied that he was one of those who was yelling at the Judge. McMurren said that the police helped Judge Henriksen out of the car and directed him to the back seat. McMurren thought that the events in the parking lot lasted ten to fifteen minutes.

Leo Lavin said that it looked to him as if there were thirty to forty people in the crowd in the parking lot. He testified that the people in the crowd were saying, "If he drives, lock him up." He claimed that Stewart tried to take the car keys from Judge Henriksen, but the Judge said that he was going to drive. Lavin testified that when the police officers saw that it was Judge Henriksen in the car, they told the people in the crowd to go back in the bar, or they "would all go downtown." According to Lavin, everybody was shouting, "Lock him up, he's drunk, he is no better citizen and he has no more rights than a regular citizen." He confirmed McMurren's testimony that the police removed Judge Henriksen from behind the wheel of his automobile.

Judge Henriksen's testimony about what happened in the parking lot was very short. He said that when he came out of the tavern, there were six or seven persons in the parking lot. He remembers someone saying, "Don't let the Judge drive", and someone else saying, "If he drives, lock him up for impaired." He denied that he yelled back at the crowd. He claimed that he stood at the northeast corner of his car waiting for John

Stewart. He admitted that he got into the driver's seat of his car and that when Stewart arrived, it was his intention to drive it.

Concerning his conversation with Sergeant Kelly, Judge Henriksen gave this testimony:

> A. Yes, Sergeant Kelly and he indicated that I shouldn't drive, and I told him, I think it was him that I told, that I felt I was capable of driving and I would take a breathalyzer. And I recall eventually, I think it was later on during the conversation with Sergeant Kelly that he said, "Well, don't drive. Let somebody else drive because whether you are capable or not", he says, "I don't want you driving" because, he says, "I would have to arrest you or have to stop you" or something to that effect, "Because these people here don't want you driving".
>
> In other words he felt that I shouldn't drive the vehicle, it was clear to me, and he said, "Let somebody else drive", and I was indicating that I thought I was capable of driving, and he said, "Well, whether you are capable or not", he said "these people think you aren't, he said, "So don't drive for your own good", or something to that effect.

Judge Henriksen swore that the incident at the Royale Tavern was an isolated one, and nothing like that has occurred before or since.

Since I am required by O.C. 2297/84 to inquire into what happened in the parking lot of the Royale Tavern, I find the facts to be as follows:

When Judge Henriksen came out of the Royale Tavern, he was highly intoxicated and in no fit condition to drive his automobile. He was followed out of the tavern by a crowd of twelve to fourteen persons who were boisterous, highly agitated and very belligerent towards the Judge. John Stewart tried to take the car keys from the Judge, but the Judge insisted that he could drive. Judge Henriksen got into the car, started the motor and would have driven out of the parking lot, if it had not been for the arrival of the police.

When the police arrived, the disturbance in the parking lot increased. People in the crowd were shouting at the police such things as, "Take him to jail", and, "If he drives, lock him up

for impaired." Judge Henriksen, from time to time, yelled back at the crowd.

Despite his obvious state of intoxication, Judge Henriksen insisted to the police that he was able to drive and wanted to take a breathalyzer test to show that he was in a fit condition to operate his vehicle. It was only when Sergeant Kelly threatened to arrest him that Judge Henriksen agreed not to drive his car. The police removed him from behind the steering wheel of the car, and he voluntarily got into the back seat. John Stewart got in the front passenger seat, and Ed Chudyk drove the car away.

The entire incident lasted about fifteen minutes.

THE MAJESTIC TAVERN INCIDENT

The third complaint in the Order in Council is:

> (c) That His Honour Judge Lloyd Henriksen did, on or about the 2nd day of October, 1980, in the presence of a group of police officers, judges, Crown attorneys, defence counsel and other members of the public, at the Majestic Tavern in Windsor, Ontario, make disparaging and intemperate remarks concerning the Ontario Provincial Police and the manner in which that force was conducting a criminal investigation in the Windsor area;

On October 2nd, 1980, the Windsor Police Force held a retirement dinner at the Majestic Tavern in the City of Windsor to honour retiring Chief Williamson. There were approximately 150 people in attendance including judges, Crown attorneys, defence counsel, members of the media, police officers and some civilian friends of the retiring police chief. The price of admission was $10 per ticket.

The dinner was arranged by Detective Sergeant Fred Robinson. At the head table were Detective Sergeant Robinson, Chief Williamson, Deputy Chief Shuttleworth and Provincial Judges Stewart, Henriksen, Nosanchuk and Momotiuk. The party was a private one and was not written up in the press. There was considerable levity and fun during the course of the evening.

At the request of Mr. Greenspan, I attended at the Majestic Tavern and took a view of the premises in order to better understand the evidence given before me. The ground floor of the tavern is divided into two halves. On one side is a dining room; on the other side, a beverage room. The two halves are divided for about 50 feet back from the main entrance by a solid plaster wall. There is then a common bar which is open at the top and which can be used by patrons on either side of the room. Behind the bar is a small open passage joining the two rooms. At the rear of the premises there is a kitchen.

On the night of October 2nd, the dining area was used for the dinner and the head table was located near the bar. Although I do not think much turns on it, I believe that a patron of the beverage room could have heard what was said in the dining room. Inspector Garswood, who attended the dinner, was of the opinion that there were members of the public in the beverage room on the night of the dinner.

Unbeknown to the persons at the dinner, the speeches at the dinner were recorded, the reason being that Chief Williamson wanted a recording of the speeches as a memento of the evening.

During the course of the evening, all four Provincial Judges were called on to speak. As it is the speech given by Judge Henriksen which gives rise to the third complaint, I reproduce the speech in its entirety. I have italicized the parts that have led to the complaint:

> well it's certainly a real pleasure to be here tonight that's a hell of an opener I want to make one thing perfectly clear I love animals and I love the Chief and not necessarily in that order the prime mistake I ever made was I gave five days to the animal hater the other day and I didn't realize she'd be out before the weekend could have been somebody that hated the Chief I'd have been locked in the basement for along while now you know that's neither here nor there we all love good fellows like Frank Montello you know he's sitten over there he loves me and he loves the Chief about equally doesn't have too much success before either one but he sure as hell keeps a good smile tell you one thing I sure as hell love the Windsor Department you know that we got guys guys that come up you know every day in court I don't even have to look around that far because they're all here tonight particularly the C I D you know it's nice to have them here tonight because they're looking at you don't have to worry about them usually the people I gotta worry about is the last five weeks from the O P P keep prying their eyes on my house from their ah telescopes you know they're surveyors (laughs) it's neither here nor there at least Windsor Police you know they're they're they're nice they they just stay in the City a pleasure it hasn't been it hasn't been as I say eh I can't say a hell of a lot about the Chief that hasn't already been said he's a hell of a fine guy he's about to retire he certainly deserves all the benefits of what he's gonna have there in retirement he's a young man he's a good looking man he's been a capable man for this job he's a person we all love and I and I can't say a helluva lot more than that about him and I'll tell you one thing as I say it if there's any force I respect and I've had the privilege of sitting around this Province if there's any force I respect it's the Windsor Police Force and I think I think I like it I like the Windsor Police Force because they've got a good common sense number one they're well trained number two they got a lot of good

personnel in that force and number three when they check things out they check em out and they check em out accurately as a rule I'm not saying anything is perfect I'm sure we got the odd lemon amongst them there's no doubt about that but I'll tell ya its ninety nine and forty four one hundredths percent pure Ivory Soap or whatever it may be we got a goddamn good force in Windsor and we can be very proud of it they can be very proud of it because they are people that have a conscience training and good common sense our force does it's job and I respect them for it when they check something out they don't go on just information they hear they check it two or three times to make sure that what they have heard is accurate and I respect that I am pleased for that they don't go off half cocked it's a credit to our Chief it's a credit to the Chief before em and I'm sure it's a credit to the Chief that is coming up with us now I like our Windsor Police I've sat in the Province I've sat here and I have sat elsewhere and I can say that there are forces that I think should keep their nose in traffic where they belong and if sometimes they exert themselves in areas where they have less than abilities and where I would like to see them check things out a little more thoroughly before they file reports which can be held against people and which have no goddamn merit whatsoever but I'm glad that the Windsor Police Force is not amongst that I'm happy to be a Judge in this City I am happy to be a Judge in this City and I am happy to have had Chief Williamson as our Chief and his predecessor before him too I know goddamn well Jack will do a good job and I like to think that when I look around here tonight and I see all his friends here tonight and I know the work they do and I know how hard things are things don't come easy when you're working hard on the force but when you see here is a force that does the job and you know they're doing it with the best you know the guys got abilities and you know that the training came from a guy like our Chief sitting right here who is retiring tonight or whatever and being replaced by a guy like Jack I'll tell you one thing I'm proud of them that's all I got to say

After the second portion of the speech that I have italicized, there was considerable applause.

I have listened to the tape of Judge Henriksen's speech, and I am satisfied that he was not intoxicated when he gave it; nor

did Judge Henriksen, in giving evidence at the inquiry, claim that he was intoxicated.

The first portion of the speech that I have italicized referred, of course, to the surveillance that the police had been conducting of Judge Henriksen's house. Staff Sergeant John Garswood of the Windsor Police Force was the officer in charge of the Criminal Intelligence Unit (he is now an Inspector in the Windsor Police Force). He was also the person who was taping the proceedings at the dinner. He had been participating in Project Manfred, and when he heard Judge Henriksen's remarks, he was surprised because the Project was still in progress, and great care had been taken to protect the covert nature of the investigation, with only a limited number of officers on both forces being aware of its existence.

The next morning Staff Sergeant Garswood had a copy made of the tape. He spoke to Inspector Manneke and Constable Allen of the O.P.P. about the Judge's remarks. They were concerned about how much the Judge knew about the police investigation. Staff Sergeant Garswood also discussed the matter with various other persons engaged in Project Manfred, such as the Windsor Chief of Police and Staff Sergeant Garswood's counterpart in the O.P.P. Inspector Sergeant Bob Gratton.

Inspector Manneke of the O.P.P., who was the officer in charge of Project Manfred, is, as I have said, now deceased. By consent, certain handwritten notes made by him were filed with me. The relevant portion of the notes are set out in the transcript, and for convenience, I will quote them from that source:

> ... Monday 6th of October, 1980. 10:30 a.m., 4:15 p.m. with Staff Sergeant Garswood to D. Hunt's office. Meet discuss speech of Henriksen to retirement party October 2nd, 1980, Chief Williamson and our response if any. Discuss project J. Takach. Attended meeting at 2:49 p.m. 4:15 - 7:45 p.m. return to Windsor. Tuesday, October 7, 1980, 12:30 a.m., contacted Inspector Lennon re response to Henriksen. Decision that there would be no force response. Advised Lennon to apprise Commissioner Graham of fact that I do not know of any judges other than McMahon would be attending retirement party for Williamson on Friday, October 10, 1980, and that Commissioner should be alerted to respond to any inquiries that could be made to him at the retirement party.

There was a further retirement dinner for Chief Williamson on Friday, October 10, a large formal dinner at Cleary Auditorium, and that is the dinner that Inspector Manneke was referring to.

Constable Fred Trewin, who was present at the dinner on October 2nd and who was also engaged in Project Manfred, said that following the speech, Judge Henriksen came to his table and they had a conversation. In the course of the conversation, Judge Henriksen said to Trewin:

> ...if Alex Radlin got into this mess it was up to him to get himself - it was his business.

Judge Henriksen said that although he expected to be asked to speak at the dinner, he had not prepared any remarks. He was not aware that the speeches were being recorded. He said that when he made his remarks, he believed that there were O.P.P. officers present. In actual fact, there were no O.P.P. officers at the dinner.

When asked by his counsel what was going through his mind when he made the remarks about police surveillance, Judge Henriksen gave this answer:

> A. As I said, I thought it was in keeping with the humour that I had used before, and also I thought it was giving them a rib for them watching me all that time and not telling me about it, and that was about it I guess.

His counsel then put this question to him and received the following answer:

> Q. Judge Henriksen, now that you have heard about this operation and you have heard Constable Allen describe operation Manfred and so on, what is your view now about the appropriateness of it?
>
> A. Well, had I known that it was extending to the extent that it was I wouldn't have made the remarks, but I thought that they were merely watching me because of my association with Alex.
>
> As I said, I knew I wasn't doing anything improper with Alex. I couldn't understand why they just didn't come and ask me about whatever they wanted to know. I didn't realize it was a huge type of investigation, and had I realized that I obviously wouldn't have mentioned anything in case it would upset something else that was

going on. But I had no idea the investigation was to the extent it was. I thought it was just merely watching what association if any I had with Alex.

With reference to the second portion of the speech that I have italicized, Judge Henriksen admitted (and this is obvious from the earlier part of the speech) that he was referring to the O.P.P.

Mr. Rosenberg asked Judge Henriksen if he had any subsequent feelings about these remarks and Judge Henriksen said:

> A. Well, the next day I was sorry that I had made them because really I have very many friends on the OPP Force, and most of them are very, very good officers, just the same as I have in Windsor. There is the odd person I suppose on either Force that I don't - that I may not particularly like the same as there are a number of people that you may not be friends with at one stage or another, but certainly I had nothing against the OPP Force as a whole at all.
>
> I think I was probably a little upset, as I said, about them watching my premises and I had, as I say, to be constantly dressed when I went back and forth.
>
> I was sorry I said it afterwards and as I say most of the OPP certainly had absolutely no problems whatever, and I hunted and fished as I said with a couple of them and I have hunted with others that are on the force since and chatted with them and most of them are very good friends. I was sorry about it when I reflected on it.

In cross-examination Judge Henriksen was asked by Commission Counsel what "reports" he was referring to when he spoke about "filing reports." He replied:

> A. I don't know. I assume that I probably had in mind maybe that they were going to file reports about what observations they had made and what not, and I would have preferred them to come as I say and talk to me about it. I think maybe that is what I had in mind, I don't know.
>
> Q. How could you say the reports had no merit when you didn't know whether a report would be filed or indeed what it might say?

A. Well, I didn't know, as I say. That is why when I said the next day when I got to thinking about the speech I had made, I was genuinely sorry because, as I said, there are many good competent officers on that force that I like very much.

Judge Henriksen, as has been stated, presides at courts in the Counties of Essex and Kent. An exhibit was filed showing the O.P.P. detachments and personnel who may be called upon to give evidence before a Provincial Judge from Windsor. They are as follows:

Essex County	Essex	49
	Belle River	9
	Gosfield South	5
	Malden	5
	Tecumseh	7
	Intelligence	4
		79
Kent County	Chatham	40
	Wallaceburg	12
	Merlin	15
	Ridgetown	20
	Blenheim	6
	Wheatley	1
		94
Total	Detachments	12
	Personnel	173

Judge Perkins, the Senior Provincial Judge for the County of Kent, gave character evidence for Judge Henriksen. He stated that some years ago Judge Henriksen commenced to come to Chatham on a regular basis to assist him. He would be quite prepared to have Judge Henriksen appointed as a full time judge in Chatham. In cross-examination, Judge Perkins was asked by Commission Counsel how many cases coming before him would involve Provincial Police, and he answered "more than 50 per cent."

Judge Stewart, the Senior Judge of the Counties of Essex and Kent, also gave character evidence for Judge Henriksen. In cross-examination he was asked a question similar to that put to Judge Perkins about the number of cases involving the O.P.P. that come before courts in his jurisdiction, and he indicated that a substantial number of the cases involve the O.P.P.

CONCLUSIONS ON THE THREE COMPLAINTS

Before turning to my conclusions on the three complaints, there is one matter that I must mention and that is the publicity in the local media which has been given to the evidence at the inquiry. For example, an article in the early edition of the Windsor Star of January 15, 1985, bore the headline, "Judge attacked OPP at party," and the later edition of the same day, the headline, "Man says he arm-wrestled judge." Mr. Greenspan submitted that, in arriving at my recommendations, I should not take this publicity into account. I agree with this submission, and I wish to make it clear that in arriving at my recommendations, I have not considered the publicity given in the media to the evidence heard at the inquiry.

The three complaints against Judge Henriksen relate not to his judicial competence or to the manner in which he performed his judicial duties, but to his behaviour in non-judicial activities. This is the fourth inquiry of this nature since 1968 when the Provincial Courts Act, S.O. 1968, c. 103 created the Judicial Council and changed the designation of "magistrate" to that of "Provincial Judge." The three previous inquiries also dealt with complaints respecting non-judicial activities of Provincial Judges, and they have established guidelines for such conduct which have been of considerable assistance to me in this inquiry. Perhaps the most eloquent statement of those guidelines is that given by Mr. Justice Robins in the Commission of Inquiry re: Provincial Judge Harry F. Williams where he said, at pp. 17-18:

> Fundamental to the ideal of justice, and no less so because it is so often repeated, is the principle that justice should not only be done but manifestly be seen to be done. And, because a judge's role is so intimate a part of the process of justice that his misbehaviour must inevitably reflect upon it, it is equally fundamental that a judge's conduct should be free from impropriety and the appearance of impropriety. That general principle is basic to all aspects of judicial behaviour - not only to a judge's behaviour in the performance of the duties of his office but also to his behaviour in his personal life.
>
> A judge's responsibility as a judge does not begin or end at the courtroom door. His behaviour off the bench is not wholly outside his position as a judge and may fall within the realm of legitimate public concern. If he engages in irresponsible or improper conduct - conduct which causes others fairly to question his

character, his honour, his integrity, his morals, his sense of decency - he loses respect, not only for himself as a person, but for the court over which he presides and the judicial process. Such conduct, even though in private life, may be at variance with his obligations as a judge and may affect his ability to discharge fully and completely his duties on the bench. Public knowledge of improper conduct by a judge can only erode public confidence in him as a judge and in the administration of justice.

The confidence of the public in the administration of justice is of paramount importance. That confidence is vital to our democratic system of government. And public confidence in the judiciary - in its integrity, its impartiality, its independence, its moral authority - is indispensable to the administration of justice. In the ultimate analysis the authority of our courts rests on public acceptance of judicial decisions - and that acceptance in turn depends on public confidence in our judges.

Every judge in his judicial and non-judicial activity has a responsibility to preserve and enhance public confidence in the administration of justice. He serves as an exemplar of justice, to much of the public its personification, and confidence in our system of justice in large measure depends on him. When he engages in misconduct, the magnitude of the misconduct may be measured by the extent to which he has impaired the confidence of the public in himself as a judge and in the administration of justice.

Some sixty years ago, the American Bar Association formulated the Canons of Judicial Conduct. In 1969, the Canons were revised and brought up to date. They are now contained in what is called The American Bar Association Code of Judicial Conduct. Canon 2 and the first part of the Commentary on Canon 2 are, I believe, relevant for this inquiry:

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Commentary

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

In an article in 45 American Bar Association Journal 339 entitled "The Judge as a Leader: The Embodiment of Justice" A.M. Cantrell, at that time chief counsel, Internal Revenue Service, observed that people generally, and lawyers as well, want to look up to the judge. Cantrell continued, at p. 340:

> That desire to look up to and respect the judge and the court is of vital importance to our way of life. It must be fostered, and it must not be discouraged. When it is discouraged or lost, there comes a disrespect for the law and a forgetting that our individual liberties depend upon the law and upon the administration of justice.
>
> The judge cannot punch a time clock and leave the job. He is The Judge twenty-four hours a day, every day. That puts a heavy burden on him--to deserve admiration and respect by his conduct off the bench as well as on it.

While these rules of conduct seem stringent, a person who is unwilling to accept and abide by them should not accept a judicial appointment. The position of judge carries with it great honour, prestige and public respect, but the price to be paid for these rewards is the acceptance, freely and willingly, of restrictions on personal and public conduct that might be regarded as onerous by the ordinary citizen. As Mr. Justice

Robins stated at p. 19 of his report on Provincial Judge Williams:

> If the standards of conduct imposed on a judge in his personal life are more exacting than those imposed on other citizens, if more is expected of him, it is because of the nature of his function as a judge. He must sit in judgment on others, mete out punishment, render decisions affecting liberty and property. To discharge his official duties he requires the confidence and respect of those before him in the courtroom and the public generally. His misbehaviour, even if it is in his private life, can damage that essential sense of trust and thus adversely affect his judicial work and the justice system. It is for such reasons that a judge's conduct should be, as far as possible, beyond reproach.

This does not mean that for the proper performance of his duties, a judge must live in retirement or seclusion. On the contrary, it is desirable that he continue to engage and participate in normal social activities with other members of the public. Shetreet, Judges on Trial (1976), at p. 324 points out the danger of a judge insulating himself too much from ordinary social intercourse:

> While it is necessary for judges to maintain a degree of insulation from the community, it should not be carried too far. For insulation is fraught with the danger that judges will lose contact with the world outside the court, which in turn will result in judicial shortsightedness and unresponsiveness to the changing needs of society.

While this is so, a judge must give careful consideration to those with whom he associates. The Honourable J.O. Wilson in A Book for Judges (1980) (a book written at the request of the Canadian Judicial Council) states, at p. 6:

> On appointment a new judge should consider his associations, professional, political, business, charitable, public service and general.
>
> This review should not be made with the preconception that all associations must be eliminated. A judge cannot be expected to live in isolation from the society of which he is such an important member nor indeed should he.

> The search should only be for such relationships as are or may be inconsistent with the requirements of his new position.

Although these comments are primarily directed to newly appointed judges, I believe that they are equally apt for all judges. In selecting his friends and associates, a judge has to strike a balance. Although it is difficult to state in words how that balance is to be achieved, I do not believe it is difficult in practice. It is largely a matter of common sense.

To assist me in determining whether Judge Henriksen's conduct, as I have outlined it, is incompatible with the due execution of his office, Mr. Brown, Commission Counsel, in his closing submissions, furnished me with a summary of the principles, as he deduced them from the authorities, which govern judicial conduct. As paraphrased by me, they are as follows:

1. A judge's conduct in the performance of his judicial duties and in his behaviour in his personal life must be free from impropriety and the appearance of impropriety.

2. The confidence of the public in the administration of justice is of paramount importance and that confidence depends on public confidence in our judges. Hence a judge must conduct himself at all times in such a way as to maintain public confidence in him.

3. The standards of conduct imposed on judges are more exacting than those imposed on ordinary citizens. However, in applying those standards human frailties and fallibilities must not be forgotten.

4. A judge owes an obligation of candour in all matters which affect the public exercise of his duties and in all personal matters which affect the public.

From my reading of the authorities, I believe that Mr. Brown's summary is an accurate one.

To warrant removal from office, there must be more than indiscretion or error in judgment. In deciding whether or not misbehaviour warrants removal from office, there is, as Mr. Justice Robins points out in the Williams' report, no test capable of exact definition. "Each case must ultimately depend on the nature of the conduct, all the facts surrounding it, its effect on the judge's ability to perform his official duties, and the extent to which it has impaired public confidence in the

judge and in the administration of justice" (Report on Provincial Judge Harry F. Williams at pp. 19-20).

With these guidelines in mind, I turn now to a consideration of the three complaints.

(a) Personal and Public Association With Alexander Radlin

This complaint is limited by the Order in Council to Judge Henriksen's personal and public association with Alexander Radlin in and after June of 1980 and is further limited by the words "an individual who he knew or ought to have known, stood charged with inter alia, the offence of possession of stolen property...." Radlin was not charged with possession of stolen property until June 10, 1980, and Judge Henriksen did not know about the charge until June 11, 1980. Although the evidence given at the inquiry concerning the relationship between Judge Henriksen and Radlin prior to June 11 is useful as background material, it is the association after that date which is critical for this inquiry.

When Judge Henriksen was told by Radlin on June 11 that he was charged with possession of stolen goods, I am of the opinion, as I have already stated, that Judge Henriksen should have avoided any association with Radlin after that date. Radlin was not a first offender. He had a lengthy criminal record which included convictions for such serious offences as receiving, and break, enter and theft. Judge Henriksen knew the details of that record. It is true that Radlin had had no convictions for Criminal Code offences since 1950, but with his knowledge of Radlin's criminal record and of what had happened to O.P.P. Constables Spurgeon and Calwell, I believe that Judge Henriksen, in order to preserve public confidence in the administration of justice, should have avoided any personal or public association with Radlin after June 11 until the charge of possession had been disposed of.

When Judge Henriksen received the telephone call from Stella Berbynuk on June 22nd to come to the trailer park to see Radlin, he should have refused to go. He knew of the charge against Radlin, and I do not see how, given this roundabout way of arranging a meeting, he could have failed to appreciate that Radlin's purpose in wanting to see him could only be to discuss that charge. If it had just been a social visit, Radlin would have come to his house, and not had his sister make the telephone call requesting a meeting. Although Mrs. Berbynuk has given a reason for placing the call, I do not find it persuasive. In my opinion, Radlin arranged to have his sister make the call so that

Judge Henriksen would be unable to ask Radlin explicitly why he wanted the Judge to come and see him.

When, after meeting Radlin in the trailer park, Radlin started to tell him how he came to be charged with possession, Judge Henriksen should have refused to listen. He should have made it clear to Radlin that he could not discuss this matter with him, and if Radlin persisted, the Judge should have left and returned home.

As to the content of the discussion between the two men about the charge of possession, I am unable to understand why Judge Henriksen would discuss "disclosure" with a person accused of a serious crime. "Disclosure" refers to the procedure in criminal cases in which the Crown discloses the details of its case against an accused so that he can make full answer and defence and will not be taken by surprise at the trial. If Judge Henriksen, as he said, believed that Radlin's story was true, why was it necessary for him to refer to "disclosure"? Again, I am unable to understand why he would tell Radlin that if disclosure bore out his story, he might have a good defence. Finally, I am unable to understand why he would discuss "election" with Radlin or why he would have told him that if he were found guilty in Provincial Court, the sentence would be "apt to be less."

A judge should avoid giving legal advice of any kind. Wilson, op. cit., at p. 7, makes the following observations about the giving of legal advice by a judge:

> No judge should at any time after his appointment give legal advice to any person. You will often find yourselves innocently solicited by friends and former clients for opinions. They may be surprised, even affronted, when you refuse to help them. You must be firm, even at the risk of offending old friends and associates. Tell them to consult a lawyer. The dangers of acting otherwise are great and obvious. Even your lightest statement of the law will be cherished and repeated, not as the opinion of a lawyer, but as that of a judge, as that of one in authority.

Although it is preferable for a judge to refuse to give any legal advice, there might be some justification for giving advice to a relative or a close friend on some entirely non-contentious matter. It is, however, most improper, in my opinion, for a Provincial Judge, sitting in the Criminal Division, to give advice to an accused concerning a criminal charge pending in the very court of which the judge is a member.

The Criminal Division of the Provincial Court plays an important role in the administration of justice in the Province of Ontario. The great majority of criminal cases are tried in this court. It is the court in which most citizens who contravene the criminal law appear for trial. Mr. Justice Robins in his report on Judge Williams summed up the role of the Criminal Division of the Provincial Court at p. 21, as follows:

> The Criminal Division of the Provincial Court is of manifest importance to the administration of justice in Ontario. Under the Criminal Code and the penal provisions of numerous statutes, jurisdiction is vested in it to hear and determine a multitude of criminal and quasi-criminal matters. This Court also has jurisdiction over a host of other issues which arise during the criminal justice process and are of fundamental importance to the liberty and property of individuals, such as applications for bail, preliminary hearings, issuance of subpoenas and search warrants.

There is an appearance of impropriety about a judge of the Provincial Court, Criminal Division, giving advice to an accused about a charge pending in that court, even if the judge has no intention of sitting on the case.

In England a practising barrister is sometimes appointed a Justice of the Peace. Shetreet, op. cit., at p. 332 points out that such a barrister is restricted from appearing or advising in a number of specific cases:

> Thus, he cannot appear or advise in any case, civil or criminal, which is due or likely to come before a magistrates' court of the county, city or borough where he sits as Justice or before any committee or other body required to consist wholly or in part of lay Justices of the same geographical area. The barrister is excluded from appearing or advising in such cases notwithstanding that he has given notice that he does not intend to sit as a Justice. (My italics)

In my opinion, the maxim that justice should not only be done, but should manifestly and undoubtedly be seen to be done, requires similar conduct of a Provincial Judge sitting in the Criminal Division.

Th next incident, the visit of Radlin and his co-accused, Joan Montreuil, to Judge Henriksen's house in the evening on some day between June 22nd and August 2nd, was unplanned. Although Judge Henriksen had not invited Radlin to his house, he should

have told Radlin that it was in the best interests of both of them that Radlin not visit him at that time. There is an appearance of impropriety about such a visit. Public perception of justice is damaged by two accused visiting a judge in his home when there are criminal charges pending against them.

Judge Henriksen's joking with Radlin, on that evening visit, in front of Radlin's co-accused Joan Montreuil, about Radlin going to jail was, in my judgment, inexcusable conduct for a judge. The two accused were facing a serious criminal charge. Judge Henriksen's jesting about the results of a conviction on that charge showed, if nothing else, a lack of appreciation of the way in which a judge should conduct himself in his non-judicial activities.

Judge Henriksen swore that he was not serious when he suggested a defence to Radlin and Joan Montreuil based on Joan Montreuil accepting responsibility for the crime and letting Radlin go free. It is interesting to compare the two versions that Judge Henriksen gave of what he told Radlin and Joan Montreuil. In his testimony at this inquiry, Judge Henriksen gave this version:

> ...then realizing that he was pretty stuck on the young lady that he was with, I said to him I said "You've got the perfect defence. After all", I said, "the gal had possession; at least she can do the time for you in the event of a conviction", or something to that effect.

Just how Judge Henriksen formed the view that Joan Montreuil had possession is not clear, for in giving the report of his conversation with Radlin on June 22, he testified:

> Mr. Radlin apparently, the lady he was in with, Joan, living with, was a sister apparently of the chap that had brought these figurines. <u>And I do not know whether she was there or not, I am not sure</u>. (My italics)

In his conversation with Inspector Manneke and Constable Allen on February 17, 1981, Judge Henriksen gave this version of what he told Radlin and Joan Montreuil on the evening visit to his home:

> An uh I was kiddin (laughs) I kidded him once but ah his girlfriend was sitting in the uh in our place and uh I said you've got the perfect defence Alex I said you've got a here's here's your girlfriend all of a

> sudden you got these stolen goods that belong to her I said I said you've got the perfect defence she goes to jail for a uh uh period of time or something I forget how it went but I was clowning with them because I know damned well you know there was no way he was going to you know

Although Judge Henriksen swore that he was not serious when he suggested a defence to Radlin and Joan Montreuil, I have grave doubts about the matter. But even if his testimony is accepted and he was not serious when he made the suggestion, it was a foolish and irresponsible thing for a judge to do. The conduct of Judge Henriksen during the visit to his house by Radlin and Joan Montreuil shows, in my opinion, a complete lack of concern for the effect of his conduct and for the responsibilities of his office.

Coming to the meeting on August 3rd, I have found, as I have stated, that Judge Henriksen's principal reason for going to Dr. Leblanc's cottage was because Radlin wanted to see him. In light of his knowledge of the criminal charge pending against Radlin and his prior discussions with Radlin concerning that charge, Judge Henriksen should not have gone to see Radlin. Furthermore it is quite inappropriate, in my opinion, for a judge to permit an accused person to summon him to a meeting for the purpose of what was obviously going to be a discussion of the accused's defence to a pending criminal charge, and even more inappropriate for a judge to disclose the fact of that summons to a member of the public, such as Dr. Leblanc.

Judge Henriksen's private conversation with Radlin at the barbeque with some forty to fifty guests looking on, some of whom may have read the article in the Windsor Star on June 11 about Radlin's arrest gave, at the very least, an appearance of impropriety. As pointed out by the Supreme Court of New York, Appellate Division, In the Matter of the Proceedings Against William F. Suglia, 320 N.Y. Supp. 2d 352 (1971), at p. 354:

> The appearance from which favored treatment can be deduced, even without real foundation, can be very harmful to the administration of justice. Likewise is providing the opportunity from which an implication of impropriety could be drawn.

The conversation of August 3 opened, according to Judge Henriksen, with Radlin asking Judge Henriksen if Radlin's lawyer, Sandy Thompson, had had "disclosure." If, as he has asserted repeatedly at this inquiry, Judge Henriksen was attempting to maintain a position of neutrality about Radlin's defence, why

would Radlin have expected Judge Henriksen to know if Sandy Thompson had had "disclosure"? Indeed, this, together with the "joking" incident, involving Joan Montreuil, about the "perfect defence," and the evidence of Judge Henriksen's response to Radlin's "summons" to the Leblanc cottage on August 3rd, makes it impossible to conclude that Judge Henriksen was, at the time, attempting to avoid any discussion with Radlin about the pending charge of possession.

Radlin then outlined to Judge Henriksen what the Judge says he believed to be a "false" defence. This is an incredible situation. A person who is before the court facing a serious criminal charge is suddenly seen to be suggesting to a judge of that court that he is thinking about putting forward a false defence and is asking the judge's opinion about it. As a result of this conversation, Judge Henriksen was now impossibly compromised. Instead, however, of immediately terminating the conversation, Judge Henriksen proceeded to advise Radlin not to use this "false" defence because he did not think another judge would believe it. He reiterated that Radlin's original story could well constitute a good defence, again telling him that it would depend upon what his lawyer told him and upon "disclosure."

I turn now to the visit of Radlin to Judge Henriksen's house on the morning of August 11. Although Judge Henriksen has given an innocent explanation for the visit and for what happened on that occasion, in my opinion this incident again involves the appearance of impropriety. Shetreet, op. cit., at p. 301 states, "appearance of impropriety is no less damaging to the usefulness of the judge than an actual impropriety."

Judge Henriksen had inferred that he was under surveillance by the police because of his association with Radlin. If Radlin arrived unexpectedly, as Judge Henriksen testified, Judge Henriksen with his knowledge of the police suspicions of his conduct, should not have invited Radlin into his house. He should have requested him to leave at once. I am also mindful of the fact that Radlin himself was almost certainly aware of the police surveillance of Judge Henriksen's home and that the Judge, in turn, must have known that Radlin knew. In all of the circumstances, this, at least, ought to have alerted the Judge to the possibility that he was being used by Radlin to convey the impression to others, including the police, that Radlin was in a "special position to influence" the Judge. This risk of the appearance from which favoured treatment might be deduced, even without real foundation, again demanded an immediate request that Radlin leave at once.

The adjournments of the charges against Radlin that were heard by Judge Henriksen on July 23, October 24 and December 22nd, 1980 were on consent. It was well known in the Windsor area that Judge Henriksen and Alexander Radlin were friends. In these circumstances, and having regard to the discussions that Judge Henriksen had had with Radlin about the charge of possession, I believe that Judge Henriksen should have recused himself and had nothing to do with the charges. It was not a situation, as in some counties, where there is only one Provincial Judge. There were other judges available who could have looked after the adjournments without any great inconvenience. Although it is not of great moment, I believe that Judge Henriksen should not have heard the applications for adjournment but should have referred them to some other judge. His hearing of the applications showed a disregard for the appearance of impartiality which is essential to the due administration of justice.

In his conversation with Inspector Manneke and Constable Allen on February 17, 1981, Judge Henriksen admitted that he had advised Radlin to elect trial in the Provincial Court and that by doing so, Radlin would receive a "better" sentence. He also admitted that he had suggested a defence to Radlin, based on Joan Montreuil accepting responsibility for the commission of the offence. In reply to a question from Inspector Manneke about what defences Radlin had disclosed to him, Judge Henriksen told the Inspector the details of the defence that Radlin related to him on August 3rd. While Judge Henriksen testified at this inquiry that he believed this defence to be a lie and that he told Radlin not to use it, the Judge did not inform Inspector Manneke of his belief or of what he had said to Radlin about it. In addition, although he hinted at the story that Radlin had originally told him about how he came into possession of the stolen figurines, he pretended not to be able to remember very much about it, whereas at this inquiry he remembered it in great detail. At the risk of stating the obvious, I would only add that telling someone what defence not to use is no different in this context from telling that person what defence to use. In my opinion, Judge Henriksen, although he denied that he ever suggested any defences to Alexander Radlin, gave legal advice to Radlin which consisted both of favourably recommending one defence and of discouraging the use of another.

While Judge Henriksen was under no obligation to disclose to the police the information that he had received from Radlin about his defences, once he had undertaken to do so, he had an obligation to be truthful with them. As Canon 2 of the Code of Judicial Conduct states, "A judge shall respect...the law." In my opinion, failing to tell the police that he believed the

defence that he disclosed to them was untrue and being evasive about a defence of which he had considerable knowledge showed a disrespect for the law.

The personal and public association between Judge Henriksen and Alexander Radlin, when considered in its entirety, constitutes serious misconduct on the part of Judge Henriksen. The confidence of the public in the administration of justice is, as has been stated, of paramount importance. Public confidence in Judge Henriksen's impartiality, independence and freedom from influence has been seriously affected by his association with Alexander Radlin. The personal and public association with Radlin is in itself sufficient to justify a finding that Judge Henriksen has rendered himself unfit to continue in judicial office.

(b) The Royale Tavern Incident

Clearly, Judge Henriksen's conduct in the parking lot of the Royale Tavern does not meet the standard of conduct required of a judge. His getting into his car and starting the motor when he was seriously impaired by alcohol, his yelling back at the crowd who were shouting at the police to arrest him, his insistence to the police that he was able to drive, his refusal to acknowledge that he was in an unfit condition to drive until the police threatened to arrest him, and his removal from behind the steering wheel by the police, constitute serious deviations from the behaviour expected of a judge. Such conduct undermines public confidence in the integrity of the judiciary and in the moral character of a judge and in his ability to properly carry out his judicial duties. As the Supreme Court of Louisiana said in Stanley v. Jones 9 So. 2d 676 (1942), at p. 683:

> The office of judge is one in which the general public has a deep and vital interest, and, because that is true, the official conduct of judges, as well as their private conduct, is closely observed. When a judge, either in his official capacity or as a private citizen, is guilty of such conduct as to cause others to question his character and morals, the people not only lose respect for him as a man but lose respect for the court over which he presides as well.

In a book published in 1955, The Road to Justice, Sir Alfred Denning (later Lord Denning M.R.) deals with the situation where a man who has been guilty of a grave offence, which is not generally known, is appointed a judge. The author says at p. 31:

> And when it is publicly known it is worse because the people will then point a finger of scorn as they did long ago saying: "Who made thee a ruler and a judge over us." Such scornful remarks destroy the confidence which people should have in the judges.

The shouts from the crowd in the parking lot of the Royale Tavern, "Take him to jail," "If he drives, lock him up for impaired," come very close to a cry of, "Who made thee a ruler and a judge over us."

The public perception of justice suffers from conduct such as that engaged in by Judge Henriksen. In the criminal courts in which Judge Henriksen presides, he is called on daily to judge cases involving drinking and driving; yet he himself has been involved in a situation where he could have been charged with such an offence.

On the other hand, there is no proof that Judge Henriksen regularly engaged in such conduct. The incident in the parking lot, serious as it was, would not, in my opinion, if it stood alone, warrant a finding that Judge Henriksen was unfit to continue as a judge.

(c) The Majestic Tavern Incident

When, shortly before July 23, Judge Henriksen found out about the police surveillance, I think that, even though he believed that he had done nothing wrong, he should have gone to the police and offered his full cooperation. A judge, as I have said, owes an obligation of candour in personal affairs which affect the public.

Judge Henriksen was of the opinion that the police should have come to him, and he said that if they had, he would have made full disclosure of any information in his possession. He should have realized, however, that if the police thought that he was doing something wrong and were maintaining surveillance of his house, there would be good reason for them not coming to him. But, regardless of that, there can be no excuse for Judge Henriksen disclosing at a public banquet that he was under surveillance. Even if Judge Henriksen believed that the surveillance was limited, as he testified, to his association with Alex Radlin, this would in no way justify his actions.

The attack by Judge Henriksen on the O.P.P. is a most serious matter. The O.P.P. are an integral part of our system of justice in this Province. They are a highly respected police force, and as can be seen, from the evidence that I have referred

to, they are frequently called on to give evidence in courts in which Judge Henriksen presides.

Although Judge Henriksen has publicly apologized at this inquiry for his disparaging remarks about the O.P.P., I believe that they have made it impossible for him to return to the Bench, and that they cannot be excused by an apology. If Judge Henriksen were in the future to rule against a member of the O.P.P. on a question of credibility, there would always be the suspicion that the ruling was based, not on the testimony of the officer, but on Judge Henriksen's opinion of the O.P.P. as expressed at the October 2nd dinner. Impartiality and freedom from bias are essential attributes of the public image of a judge. By his disparaging remarks, Judge Henriksen has permanently impaired that image. As Shetreet, op. cit., states at p. 281:

> For maintaining public confidence in the particular judge and in the courts in general it is necessary that judges whose conduct has seriously impaired or destroyed public confidence in their usefulness, should leave the bench.

(d) Cumulative Effect of the Three Complaints

Commission Counsel submitted that in arriving at my recommendations, I might consider the cumulative effect of the three complaints. I agree that this is appropriate. In Wenger v. Commission on Judicial Performance 630 P. 2d 954 (1981), the Supreme Court of California, in bank, in reviewing a recommendation of the California Commission on Judicial Performance that a judge be removed for wilful misconduct in office and conduct prejudicial to the administration of justice, said on this point, at p. 975:

> The number of wrongful acts is relevant to determining whether they were merely isolated occurrences or, instead, part of a course of conduct establishing "lack of temperament and ability to perform judicial functions in an even-handed manner."

Thus, even if, as I have indicated, the Royale Tavern incident, standing alone, would not warrant a finding that Judge Henriksen is disabled by his conduct from the due execution of his office, the three complaints considered cumulatively lead to no other conclusion. In the Inquiry re: The Honourable Mr. Justice Leo A. Landreville (a federally appointed judge), the Commissioner, The Honourable I.C. Rand, proposed the following

test for determining whether a judge is unfit to continue in judicial office (at p. 97):

> When the function of the judge is fully sensed, to hear, weigh, and, according to Law, to decide justly, to do so in a manner which fair-minded persons acting normally, expressing in fact enlightened public opinion, would approve, determining unfitness in a judge, at least in the statement of principle, does not perhaps present as much difficulty as might be imagined. That principle would seem to be this: would the conduct, fairly determined in the light of all circumstances, lead such persons to attribute such a defect of moral character that the discharge of the duties of the office thereafter would be suspect?; has it destroyed unquestioning confidence of uprightness, of moral integrity, of honesty in decision, the elements of public honor? If so, then unfitness has been demonstrated.

Mr. Greenspan agreed that this was the proper test to be used by me in judging the conduct of Judge Henriksen. Applying the test, I believe that the three complaints considered cumulatively demonstrate that Judge Henriksen is unfit to remain in judicial office. His conduct has made it impossible for him to continue as a useful member of the judiciary.

RECOMMENDATIONS

For these reasons, I report that Provincial Judge Henriksen has become incapacitated or disabled from the due execution of his office by reason of conduct that is incompatible with the execution of his office, and I recommend that he be removed from that office.

As to costs, I see no reason why Judge Henriksen should be compensated for all or part of the costs incurred by him relating to this inquiry. Judge Henriksen has been receiving his full judicial salary since April, 1981, when he was given leave of absence because of the laying of the criminal charges against him. This inquiry has been a costly one for the people of this Province. In my opinion, in light of his knowledge of the facts surrounding the three complaints, Judge Henriksen should have resigned after the hearing before the Judicial Council. Accordingly, I make no recommendation that Judge Henriksen be compensated for his costs.

All of which is respectfully submitted.

Commissioner

Osgoode Hall,
Toronto.

February, 1985.

Appendix A

Staff of Commission

John W. Brown, Q.C. Kathryn N. Feldman	Commission Counsel
Inspector James Neish	Commission Investigator
Michael Penny	Executive Secretary
Elizabeth Coote	Secretary

Appearances

Edward L. Greenspan, Q.C. Marc Rosenberg	Counsel for Judge Lloyd Henriksen
Harry Black, Q.C.	Counsel for the Ontario Provincial Police
H. B. Geddes, Q.C.	Counsel for the Windsor Star
D.J. Henry	Counsel for the Canadian Broadcasting Corporation

Appendix B

Public hearings were held in Trianon Room "C", in the Holiday Inn, 480 Riverside Drive, Windsor, Ontario on the 14th and 15th days of January and the 17th and 18th days of January, 1985 and in the Campaign Room in the Holiday Inn, on the 29th day of January, 1985.

Appendix C

Witnesses called are listed below:

Staff Sergeant Fred Robinson
Inspector John Garswood
Jack William Pluck
Constable Frederick Trewin
Constable James Robert Biggs
Sergeant James Kelly
Constable Kevin John Holman
Constable Ronald James Hartigan
Roy Leonard Aldous
Douglas Joseph McMurren
Leo Lavin
Steve Piskulic
Staff Sergeant Glen Michael Stannard
Detective Lawrence Patrick Berneche
Constable George Leslie Hiles
Sergeant Gerald Norman Westlake
Corporal Garnet Albert Matthews
Constable Ronald James Allen
Provincial Judge Lloyd Alrik Henriksen
Stella Berbynuk
Provincial Judge Carl Emerson Perkins
Provincial Judge Gordon Roy Stewart
George Arthur Yates, Q.C.
Richard D. Thrasher, Q.C.
Clifford Norman Sutts, Q.C.
Leon Paroian, Q.C.
Patrick Joseph Ducharme
Roger Gerard Rivait
Seymour Posner

Appendix D

List of Exhibits

	No.
Certified copy of Order in Council No. 2297/84	1.
Letters of October 1, November 15 and December 12, 1984 to Provincial Judge Henriksen re the inquiry	2.
Declarations re the Commission of Inquiry and notice of the public hearing in the Windsor Star	3.
Oath of Office, Oath of Allegiance of Lloyd Alrik Henriksen and copy of Order in Council No. 4665/68 appointing Lloyd Alrik Henriksen as a Provincial Judge	4.
List of O.P.P. detachments and personnel who may be called upon to give evidence before a Provincial Court Judge from Windsor	5.
Transcript and tape of the speech of Judge Lloyd Henriksen at the Majestic Tavern on October 2nd, 1980	6.
Transcript and tapes of speeches at the retirement dinner for Chief John Williamson at the Majestic Tavern on October 2nd, 1980	7.
Handwritten notes of Inspector Manneke, October 6 and 7, 1980	8.
Diagram showing the location of the Royale Tavern	9.
Photographs of the Royale Tavern	10A - M.
Handwritten report of Constable Holman dated April 15th, 1980 and typed copy thereof	11.
Handwritten report of Constable Holman dated November 11th, 1983 and typed copy thereof	12.

List of Exhibits

	No.
Information dated June 10, 1980 charging Alexander Radlin, et al. with possession of stolen property, warrant of committal upon conviction for Alexander Radlin and criminal record of Alexander Radlin	13A - C.
Information dated October 24th, 1980 charging Alex Radlin with five counts of procuring	14.
Information dated March 27th, 1981 charging Alex Radlin with one count of procuring	15.
Transcripts of proceedings on July 23rd, October 24th and December 22nd, 1980 before His Honour Judge Lloyd Henriksen	16A - C.
Aerial photograph showing Thames Valley Trailer Park and Henriksen residence	17.
Five photographs of the front of Henriksen residence showing white trailer home	18.
Photograph of Leblanc cottage	19.
Sketch of City Hall Square, Windsor	20.
Transcript of interview between Inspector Manneke, Provincial Constable Allen and Judge Henriksen on February 17, 1981	21.
Photocopy of Christmas card from Thames River Trailer Park to John R. Burke	22.
Invoice from Thames River Trailer Park to George Hiles	23.
Copy of 1980 calendar	24.
Sketch of Lighthouse Cove Development showing view from trailer park to Judge Henriksen's house	25.
Newspaper article from the Windsor Star dated June 11, 1980	26.

List of Exhibits

	No.
Copy of letter of April 28, 1981 from R. Roy McMurtry, Attorney General, to Chief Justice Howland	27.
Copy of letter of March 5, 1984 from R. Roy McMurtry, Attorney General, to Chief Justice Howland	28.
Letters of reference (29 letters)	29.
Agreed statement of facts regarding criminal charges against Judge Henriksen	30.
Letter from L. Drobnic and other material re International Health Studio	31.
Sealed exhibit enclosing affidavit from Judge Henriksen regarding assets and liabilities	32.
Newspaper stories re conduct of other judges	33.